

Re WEST ELGIN ELECTION

INVESTIGATION

REPORT OF

COMMISSIONERS

R.G.18
COMMISSIONS and COMMITTEES

West Elgin Election Investigation.
Report.

B-~~22-6-1900~~

TORONTO;
PRINTED AND PUBLISHED BY L. K. CAMERON
Printer to the King's Most Excellent Majesty.
1901.

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WARWICK BRO'S & RUTTER, PRINTERS AND BOOKBINDERS,
TORONTO.

O. MOWAT,
Lieutenant-Governor.

PROVINCE OF ONTARIO.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c., &c., &c.

To His Honour John Augustus Barron, Judge of the County of Perth, His Honour Duncan Byron MacTavish, Judge of the County of Carleton, and His Honour Edward Morgan, First Junior Judge of the County of York, Our Commissioners in this behalf, Greeting :—

J. M. GIBSON,
Attorney-General.

Whereas in and by Chapter Nineteen of the Revised Statutes of Our Province of Ontario, entitled "An Act respecting Inquiries concerning Public Matters," it is enacted that whenever the Lieutenant-Governor of our said Province-in-Council deems it expedient to cause enquiry to be made into and concerning any matter connected with the good government of Our said Province, or the conduct of any part of the public business thereof or the administration of justice therein, and such inquiry is not regulated by any special law, the Lieutenant-Governor may, by the Commission in the case, confer upon the commissioners or persons by whom such enquiry is to be conducted, the power of summoning before them any party or witnesses, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation if they be parties entitled to affirm in civil matters), and to produce such documents and things as such commissioners deem requisite to the full investigation of the matters into which they are appointed to examine, and that the commissioners shall then have the same power to enforce the attendance of such witnesses, and to compel them to give evidence and produce documents and things, as is vested in any court in civil cases; but that no party or witness shall be compelled to answer any question by his answer to which he might render himself liable to criminal prosecution.

And whereas it has been made to appear to the Executive Government of Our said Province that the judges trying the election petition filed by one James G. Nunn against the return of Donald McNish, Esquire, as member of the Legislative Assembly for the Electoral District of the West Riding of the County of Elgin at an election held on the fifth and twelfth days of January, 1899, found that certain irregularities had been committed in the appointment of deputy-returning officers and by persons acting as deputy-returning officers without lawful authority so to do, and in the return to the returning officer of the ballots and other papers by deputy-returning officers or the persons who personated them, and that it appearest to the said judges that the said election had not been conducted according to the principles laid down in the Ontario Election Act.

And whereas the Lieutenant-Governor of Our said Province of Ontario-in-Council deems it expedient that enquiry should be made into the conduct of the returning officer and the deputy-returning officers and poll clerks in such election;

Now know you that We, having and reposing full trust and confidence in you the said John Augustus Barron, you the said Duncan Byron MacTavish and you the said Edward Morgan do hereby, by and with the advice of Our Executive Council of Our said Province, appoint you the said John Augustus Barron, you the said Duncan Byron MacTavish and you the said Edward Morgan to be Our commissioners in this behalf to inquire into and to report to Our said Lieutenant-Governor upon the conduct of the returning officer and of the several deputy-returning officers and poll clerks at and in connection with the said election, giving to you Our said commissioners full power and authority to summon before you any party or witnesses, and to require him, or them, to give evidence on oath, orally or in writing (or on solemn affirmation if such party or witnesses is or are entitled to affirm in civil matters), and to produce to you Our said commissioners such documents and things as you may deem requisite to the full investigation of the premises, together with all and every other power and authority in the said Act mentioned and authorized

Recorded 2nd day of February, A.D., 1900.
JOHN F. C. USSHER,
Deputy Registrar.

to be by us conferred on any commissioner appointed by authority or in pursuance thereof.

And we do require you Our said commissioners forthwith after the conclusion of such inquiry to make full report to Our said Lieutenant-Governor touching the said investigation together with all or any evidence taken by you concerning the same.

To have, hold and enjoy the said office and authority of commissioners for and during the pleasure of Our said Lieutenant-Governor.

And We hereby appoint you the said John Augustus Barron to be chairman of the said commission.

In testimony whereof We have caused these Our letters to be made patent and the great seal of Our said Province of Ontario to be hereunto affixed.

Witness : The Honourable Sir OLIVER MOWAT, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, member of Our Privy Council for Canada, and Lieutenant-Governor of Our said Province of Ontario.

At Our Government House, in Our city of Toronto, in Our said Province, this thirty-first day of January, in the year of Our Lord one thousand nine hundred, and in the sixty-third year of Our reign.

By command,

J. R. STRATTON,
Secretary.

REPORT OF THE COMMISSIONERS IN REGARD TO THE ALLEGED OFFENCES AND IRREGULARITIES IN THE WEST ELGIN ELECTION.

To His Honour the Lieutenant-Governor in Council.

The Commissioners, appointed by Royal Commission under the Seal of the Province of Ontario bearing date the 31st day of January, in the year of Our Lord 1900, to enquire into and report to the Lieutenant-Governor of the said Province of Ontario upon the conduct of the returning officer and of the several deputy returning officers and poll clerks at and in connection with an election held on the 5th and 12th days of January, 1899, of a member of the Legislative Assembly for the Electoral District of the West Riding of the County of Elgin, in the said Province of Ontario, having taken upon themselves the burden of the enquiry, report as follows :

On the 8th day of February following the date of the issue of the commission and before actively entering upon the investigation, the Commissioners met at the Court House in the City of Toronto, and to provide for more properly conducting the enquiry, the Commissioners formulated and adopted the following rules :

1. The Commissioners will meet at such times and places as may be deemed convenient and necessary for the purposes of the commission as may be hereafter appointed by them.

2. The Commissioners will direct notice to be given to officials and persons referred to in the commission and within the scope of the investigation thereby directed of meetings at which evidence will be heard affecting such officials and persons.

3. All statements made to the Commissioners at meetings of the commission in the course of the investigation shall be so made under oath first administered to the deponent by one of the Commissioners (saving and excepting statements and addresses of counsel).

4. Evidence in aid and furtherance of the commission and the investigation thereby directed shall be presented before the Commissioners by and through counsel nominated by the Crown.

5. Officials and persons whose conduct and acts are the subject of enquiry and investigation by the Commissioners shall, if so advised, be entitled to be represented before the commission by counsel and such counsel shall be heard in respect to evidence and matters affecting the persons so represented.

6. All persons having charges to make against officials and persons within the scope of the commission or having information in their possession which is material to be known and will assist the Commissioners in their investigation, are requested to furnish particulars thereof in writing as soon as possible to the counsel for the Crown for the purpose of enabling such counsel to prepare and produce evidence thereof before the Commissioners.

7. Such further rules, regulating the proceedings before the Commissioners, shall be made from time to time as may be found necessary to expediate and assist in the execution of the commission and in the investigation thereby directed.

The foregoing rules the Commissioners caused to be published for the period of time between February 19th to the 1st day of March in the St. Thomas Journal and the St. Thomas Times, two newspapers published in the City of St. Thomas, in the said West Riding of Elgin, and in the Dutton Advance, a newspaper published in the Village of Dutton, in the said West Riding of Elgin, and gave notice in writing to the president and secretary of the Reform Association and to the president and secretary of the Conservative Association of the Electoral District of West Elgin of the appointment of the commission and of the sittings thereof, and invited them and all others having charges to make against officials and persons within the scope of the commission, or having information in their possession which was material to be known and would assist the Commissioners in their investigation to furnish particulars thereof in writing as soon as possible thereafter so that the same might be enquired into by and before the Commissioners. Notwithstanding such public and other notices, no charges were presented by any person or persons whomsoever, but on the contrary your Commissioners received from the acting president of the said Conservative Association, a communication declining to take any part in the investigation, or to make any specific charges, or to give any information whereby the Commissioners would be assisted in the enquiry; therefore the Commissioners proceeded without specific charges to make the investigation and enquiry as directed.

That Mr. George H. Watson, Q.C., of counsel for the Crown in the matter of the said investigation having stated to the said Commissioners that he had been informed that the ballots, poll books, documents and records relating to the said election had been long since destroyed and that the officials and persons in whose charge they had been placed were not now able to produce them, the said Commissioners decided to at once and before proceeding otherwise to take evidence as to the existence or non-existence of the said ballots, poll books, documents and records and as to the reasons (if any) for the non-production thereof and by and through whose acts the said ballots, documents, etc., were destroyed as alleged.

On the 9th day of February next thereafter the Commissioners proceeded with that part of the investigation and caused to be examined upon oath every official and all and every other person or persons whomsoever in whose custody the said ballots, poll books, documents and records at any time or times had been or should have been or who had handled the same or in any way whatsoever had been connected therewith and in regard thereto report as follows:—

On the 24th day of January, 1899, the box containing the ballots, poll books, documents and records of the said election was received by Charles Clark, Esquire, personally as the Clerk of the Crown in Chancery at the Parliament Buildings in the City of Toronto, which box was delivered to him by the American Express Company and he then and there assisted by one James A. Robertson deposited the said box in the condition in which it was received with its contents in the inner vault beneath the Parliament Buildings, the vault wherein it is the custom and rule to keep all the boxes and packages containing the records, poll books and documents in regard to Provincial Elections.

The said box with its contents remained in the said inner vault intact until the 24th day of March, 1899, on which latter date the said box was sent to and delivered at Osgoode Hall in the City of Toronto by the said James A. Robertson to whom for that purpose it had been delivered by the said Clerk of the Crown in Chancery in pursuance of an Order bearing date the 14th day of March, 1899, and made by the Honourable Mr. Justice Osler for an inspection of the ballots pertaining to the said election.

The said ballots were subsequently inspected at Osgoode Hall by and in the presence of Counsel for James G. Nunn and Donald McNish, the Petitioner and Respondent respectively named in the Election Petition referred to in the said Royal Commission before James S. Cartwright, Esquire, the Registrar for the Court of Appeal for Ontario in pursuance of the said Order of the 14th day of March, 1899, and the commissioners find that when so received at Osgoode Hall the said box and its contents were in the same condition in all respects as when received by the said Clerk of the Crown in Chancery as aforesaid on the 24th day of January, 1899.

On the 29th day of March, 1899, the inspection of the said ballots was concluded and on the Saturday the 7th day of April following, the said box with its contents was delivered by the said James S. Cartwright, Registrar for the Court of Appeal for Ontario as aforesaid to the said James A. Robertson who was instructed by the said Clerk of the Crown in Chancery to receive back the same. On that day, viz., the 7th day of April the Clerk of the Crown in Chancery was absent at his home in Elora and the said James A. Robertson having thus received the said box with its contents, deposited the same on the said 7th day of April, 1899, in the outer room of the said vault, the door of which he locked, from whence on the 9th day of April, the following Monday, it was removed by the said James A. Robertson and deposited in the said inner vault by the said James A. Robertson in the presence and by the instruction of the said Clerk of the Crown in Chancery, who alone retains the key thereof and the commissioners have no reason to find otherwise than that when so again deposited in the inner vault on the 9th day of April the said box with its contents was in the same condition as when received by the said James A. Robertson from the said James S. Cartwright, as aforesaid.

On the 12th and 13th days of April following without suggestion or request from any person or persons whomsoever and in pursuance only of the authority of the Statute in that behalf, the said Clerk of the Crown in Chancery proceeded to destroy by fire the ballot papers, records and all documents of the previous General Election and upon those two days so destroyed in pursuance of the said Statute the ballot papers, records and all documents relating to ninety-two constituencies.

On the morning of the 12th day of April when inspection was made for such purposes, the said box containing the ballot papers, records and documents in reference to the election in West Elgin on the 5th and 12th day of January, 1899, was in the said inner vault and on the morning of the 13th day of April when inspection was again made in order to continue said statutory destruction the said last mentioned box with ballot papers, records and documents was missing.

The commissioners can arrive at no other conclusion upon the evidence of all parties engaged in the destruction of the ballots, etc., than that the said box with its contents was inadvertently taken with the other boxes containing the general election returns from the vault to the furnace and there burnt. The evidence satisfies us that the said box with its contents was not destroyed with design or deliberate purpose, but it indicates an absence of that care and caution in calling over, checking and scrutinizing the boxes and packages containing the ballots and other election papers, which should be observed in transferring such important papers from the vault to the furnace for the purposes of the Statute.

When the said West Elgin ballot papers and documents were forwarded by the returning officer at St. Thomas to the Clerk of the Crown in Chancery, the same were securely packed by the said returning officer in a box specially constructed for the purpose, the lid of which was screwed down, the screw heads counter sunk and the holes or openings thus formed sealed with sealing wax, and we find on the evidence of Mr. Gagen, who represented the petitioner on the occasion of the said inspection at Osgoode Hall, that the said box reached Osgoode Hall, to all appearances, in the same condition as that in which it was when it left the said returning officer.

The aforesaid inspection of ballots, documents and records at Osgoode Hall, after a prolonged inspection and investigation in the presence of counsel for all parties concerned, did not to any material extent disclose a result differing from the signed statements given out by the respective deputy returning officers at the respective polls at the close thereof and which were joined in and signed in nearly every instance by the agents thereof of the respective candidates.

On the 1st day of March the commissioners opened the enquiry at St. Thomas, in West Elgin, and the commission then, after drawing attention to the rules and regulations laid down and to the published notices of the sittings of the commission, stated "inter alia."

"We have called by way of advertisement upon the public to furnish the commission (any one of us three gentlemen sitting here) with any information they possibly can in regard to the subject matter of the investigation, which subject matter is of course known far and wide. They can also furnish that information to the Crown Counsel, Mr. Watson, who will subpoena the witnesses whose names are given to him and we shall

"see that the evidence is properly brought out. We cannot emphasize too strongly this invitation extended to the public generally to assist us by giving us all the information they possibly can which will enable us to fully, fearlessly and impartially inquire into the subject matter of this investigation. They need not be at all uneasy in giving the information either to the commissioners or to Mr. Watson. The commissioners will then see that the matter is properly attended to."

The constituency of West Elgin comprises the following, viz. : 8 polling divisions in the township of Aldborough, 8 polling divisions in the township of Dunwich, 1 polling division in the village of Dutton, 7 polling divisions in the township of Southwold, and 14 polling divisions in the city of St. Thomas.

The commissioners caused to be brought before them and to be examined under oath the deputy returning officer, the poll clerk, the agents representing the conservative candidate and the agents representing the liberal candidate at the said election at each of the said several polling divisions in the said riding, with one or two exceptions, as well as every other person, whose name was in any way concerned, connected or mentioned or happened, upon whose attendance could be secured in connection with the said investigation, and the commissioners report as follows :

ALDBOROUGH.

In none of the polling divisions in the township of Aldborough were there any irregularities in the appointment of any of the deputy returning officers. No deputy returning officer acted as such at any division in this township without lawful authority so to do in pursuance of the Statute in that behalf.

That there were no irregularities in the return of any one of the deputy returning officers to the returning officer of the ballots and other papers in connection with the said election, but on the contrary the conduct of the returning officer, the deputy returning officers, the poll clerks and any and all others at all the polling places, in the said township of Aldborough, was regular and proper and their proceedings in all and every respect conducted according to law.

DUNWICH.

In none of the polling divisions in the township of Dunwich were there any irregularities in the appointment of any of the deputy returning officers. No person acted in the capacity of returning officer without lawful authority so to do in pursuance of the Statute in that behalf.

There were no irregularities in the return of any one of the Deputy Returning Officers to the Returning Officer of the ballots or other papers in connection with the said election, but on the contrary the conduct of the Returning Officer, the Deputy Returning Officers, Poll Clerks and all others at the respective polling places in said Township of Dunwich was regular and proper, and their proceedings in all respects conducted according to law ; but in polling place No. 3 the constable left the polling place before the close of the poll, which act on the part of the said constable, Mr. Archibald McKellar, the agent for Mr. McDiarmid considered was objectionable. As, however, Mr. McKellar stated to the commissioners that the constable thus leaving before the poll had closed had no effect upon the proceedings the commissioners considered the incident to be of no importance.

VILLAGE OF DUTTON.

In the polling division of the Village of Dutton there was no irregularity in the appointment of the deputy returning officer—no person acted as such deputy returning officer without lawful authority so to do in pursuance of the statute in that behalf.

There were no irregularities in the return of the deputy returning officer of the ballots and other papers to the returning officer, but on the contrary the conduct of the returning officer, the deputy returning officer, poll clerk and all others in said polling place and in connection therewith was regular and proper and the proceedings thereat in all respects conducted according to law.

TOWNSHIP OF SOUTHWOLD.

In the polling divisions 1, 2, 3, 5 and 7 respectively there was not any irregularity in the appointment of the deputy returning officers. No one acted in any of these divisions as deputy returning officer without lawful authority so to do, in pursuance of the statute in that behalf. There were no irregularities in the return of the deputy returning officer to the Returning Officer of the ballots and other papers in connection with the said election, but on the contrary the conduct of the returning officer, the deputy returning officers, poll clerks and all others in the said polling places was regular and proper and the proceedings thereat in all respects conducted according to law.

POLLING DIVISION 4, SOUTHWOLD.

The returning officer is now the sheriff of the County of Elgin and has been such sheriff for the past 16 years.

At the election held in the West Riding of Elgin on the 5th and 12th of January, 1899, he named as deputy returning officer in polling division No. 4 Southwold, one Richard Stafford. The latter was then and had been a resident of several years standing in the Township of Southwold, was then a farmer and Justice of the Peace and at the time was secretary-treasurer of the Southwold Insurance Company, and the commissioners have no doubt that he was fully qualified in all respects for the office of deputy returning officer, he having previously acted in that capacity on several occasions. It was well known at the time that he was not in good health, but in as much as he had not notified the said returning officer, as he promised he would do if he found himself too ill to act it was not unreasonable for the said returning officer to conclude that he, the said Richard Stafford, was able and intended to act.

The returning officer then on the 10th day of January, 1899, formally appointed the said Richard Stafford as deputy returning officer in said polling division No. 4, Southwold, in accordance with the statute in that behalf, and the ballot box and all necessary ballot papers, documents and records having reference to the said polling division were on that day forwarded and delivered to the said Richard Stafford by a special messenger (a brother of the said returning officer) and the said messenger thereafter reported to the returning officer that he had so delivered the said box with papers as aforesaid to the said Richard Stafford, and that the said Richard Stafford had stated to him that he would act as deputy returning officer accordingly.

The provision in the statute whereby the oath to be taken by deputy returning officers before acting can be administrated by a Justice of the Peace for the county justified the returning officer in assuming that the usual and necessary oaths would be taken by the said Richard Stafford before proceeding to a performance of his duties, but as the said Richard Stafford did not in fact act as deputy returning officer as aforesaid the oath was never taken by him.

The commissioners find that the said returning officer did not know that the said Richard Stafford did not act as deputy returning officer as aforesaid until the morning of the 13th day of January, 1899, the day after the election and they have no evidence before them upon which they can find that he, the said returning officer, had any reason to know or had any reason to suspect that he the said Richard Stafford would not act as such deputy returning officer in pursuance of his appointment, nor can they find that he the said returning officer had any reason to know or to suspect that one Duncan Bole hereafter referred to was going to act, or that he the said Duncan Bole did act until the morning after the day of polling, when he the said Duncan Bole delivered to the said returning officer the said ballot box with its contents when for the first time the said returning officer saw the said Duncan Bole or heard of him.

On the afternoon of the day before the day of polling the said Duncan Bole called at the house of the said Richard Stafford in the village of Shedden within the said polling division No. 4, Southwold, and there presented a paper to the said Richard Stafford which purported to be signed, and in fact was signed, by Donald McNish, the respondent in the said petition, which said paper contained a written request to the said returning officer and was addressed to the said Sheriff as returning officer to appoint bearer deputy returning officer as aforesaid. This paper or request, however, had never been presented

to the said returning officer, nor in fact had he ever seen it. On presentation to the said Richard Stafford of the said written request, he thereupon and on the authority of said request delivered up to the said Duncan Bole the said ballot box for polling division No. 4, Southwold, containing all the ballots and other papers, documents and records for the next day's election in said polling division, and swore in the said Bole as deputy returning officer.

The said Richard Stafford (since deceased) when accounting for this act on his part said to the returning officer: "I was deceived and imposed upon the same as you were," and the commissioners find as a fact that this was the case.

The said Duncan Bole having thus procured the said box, ballots and papers proceeded to act and did act the next day as deputy returning officer at said polling division No. 4, Southwold. That in so acting or professing to act, he the said Duncan Bole, was doing an unlawful act, and in so acting or professing to act he assumed to do that and did that for which he had no appointment and no authority from the said returning officer, the only one under the Statute in that behalf who could confer the appointment and grant the authority.

During the taking of the vote at this polling division it was claimed by the agent for the conservative candidate that a voter had spoiled his ballot paper and should be given another. This claim was allowed by the said Duncan Bole, assuming to act as aforesaid, and another ballot paper was given to this voter and he voted, so that no harm resulted from this incident.

On another occasion a voter claimed at the time he handed his ballot paper to the said Duncan Bole, assuming to act as aforesaid, that his ballot paper had been spoiled, but as the alleged spoiling consisted in his voting as he alleged for the wrong person, the said Duncan Bole refused to treat the ballot paper thus given him as a spoiled ballot under the Statute in that behalf, and thereupon dropped this particular ballot paper thus marked into the ballot box. This was done against the remonstrance of Robert Nichols the agent for the conservative candidate, who stated on evidence that with this exception he saw nothing in the conduct of the proceedings at this polling place "that was suspicious or wrong," and consequently at the close of the poll he, the said Robert Nichols, agent as aforesaid for the conservative candidate, and the other agents present signified their approval of the statement of the result of the poll by signing the same in pursuance of the Statute in that behalf. Notwithstanding that he the said Duncan Bole acted unlawfully as aforesaid and without legal authority, we have to find upon the evidence of himself, corroborated by that of the scrutineers representing both candidates, that no act was done or permitted by him by which the integrity of the poll was violated or the will of the electorate in any way subverted. The circumstances under which the said Bole assumed the office of deputy returning officer, are not disclosed, except by his own testimony, from which it appears that he was assured in the Liberal Club rooms that his appointment would be made by the returning officer, it at the time being necessary for him to proceed immediately to the outgoing train for Sutton, where the poll was held.

SOUTHWOLD No. 6.

The said returning officer had named as deputy returning officer for this polling division one George King, a resident of and in the said division. He had served in that capacity at a prior election when the plebiscite was taken. The request to act, however, did not reach the said George King until the second day before the day of polling, although mailed to him the previous Friday. He the said King declined to act, giving as a reason his want of capacity, and the fact is his work on the occasion of the plebiscite vote had afterwards to be corrected by the said returning officer—he, however, secured the attendance of two constables (Messrs. James Lowton and Isaac Walter) at the request of the said returning officer, who asked him to see that everything at the poll was in readiness on the day of election. The duty of securing constables lies with the deputy returning officer and not with the returning officer, but the reason advanced for the returning officer's action was that King's refusal to act as deputy returning officer at such a late period inconvenienced the returning officer who knew not then whom to get.

Compliance with this request by the said King required his attendance at the polling place on the morning of the polling, and he was then in attendance.

The deputy returning officer afterwards appointed by the said returning officer for this division was one John G. Pritchett, a resident of the city of London. On Tuesday next, before the day of election he, the said Pritchett, introduced himself to the returning officer as one Marshall B. Johnson, the name of a reputable and responsible citizen and voter of the city of St. Thomas, and the said Pritchett from thenceforward personated the said Marshall B. Johnson. The returning officer knew the said Marshall B. Johnson by name and repute but did not know him by sight. This circumstance can be accounted for by the fact that the said Marshall B. Johnson, being a conductor or other officer on the railway, was frequently in that capacity absent from the city. The said Pritchett was accompanied to the said returning officer by another railway man, whose name the Commissioners have been unable to ascertain, and whom the returning officer knew only by sight, and he professed to identify the said Pritchett as the said Marshall B. Johnson. These two men informed the returning officer that the said King was not going to act, which was the first the said returning officer knew of it. He, however, declined to recognize the alleged fact that King would not act until he himself had seen King, which he then promised to do. About 12 o'clock of the same day the said King called upon the returning officer and declined to act, and the returning officer's account of this interview is as follows :—

“Q. Then on Tuesday he called ; what did he say? A. He refused to act. Q. “Why? A. He said that in former elections the deputy returning officer allowed quite a “number of people to remain in the hall, and if there was any dispute about a vote they “would all congregate about the deputy returning officer and join in the conversation “whether he had a right to vote or not, and there had been a disturbance and he says, “‘If I am appointed I won’t allow that, and as I am a neighbour it would cause hard “feelings. I was born and brought up there and I won’t act at all.’ I asked him then “who in that neighbourhood would be available, and he said he did not know of anyone “who would take it. ‘They all think about the same as I do—that you had better ap- “point some one from St. Thomas, then he can put these people out and there will be no “hard feeling.’”

As a consequence of the said King refusing the office it became vacant.

Later on in the same day the said Pritchett, personating the said Marshall B. Johnson as aforesaid, returned and presented a letter to the said returning officer, of which the following is admitted a copy :—

“St. Thomas, January 10th, 1899.

“I desire you to appoint the bearer deputy returning officer for polling sub-division “No. 6, Township of Southwold.

“(Sgd) DONALD McNISH.

“To SHERIFF BROWN, St. Thomas.”

The original of this letter was in fact signed by the said Donald McNish, and he, the said returning officer, relying upon it notwithstanding it did not name any particular person, appointed the said Pritchett under the name of the said Marshall B. Johnson, believing him, the said Pritchett, to be the said Marshall B. Johnson, and believing, as he was informed, that he lived in Ward No. 5, St. Thomas, and was a voter.

The said returning officer did not swear in the said Pritchett as deputy returning officer, but the form of swearing him in was gone through with on the opening of the poll, the said King professing to administer the oath, whereupon the said Pritchett signed the name of Marshall B. Johnson and proceeded to swear in the agents present for the respective parties.

A large number of the ballots the said Pritchett had initialed before opening the poll, contrary to the statute in that behalf.

On the evidence of Mr. Luton, who was the Conservative scrutineer, we find that nothing objectionable occurred at this polling place except in so far as the initialing of the said ballots as aforesaid, and except that he, the said Pritchett, miscalled one vote, which, however, was afterwards counted correctly on the application of the said Luton.

The said Pritchett returned the ballot box containing the poll book, ballots, documents and other vouchers to the returning officer at his house the same evening at 7 o'clock without, as he claims, having opened it or tampered with it from the time it was

sealed up at the close of the poll, and the ballot papers, records, documents, etc., in this division remained securely under the protection of the returning officer until the box containing such and other election papers was sent to Toronto on the 24th January, 1899.

Although to miscall ballots was the corrupt object and intention with which the said Pritchett assumed the office of deputy returning officer yet the commissioners can not find that the said Pritchett did in fact miscall as he states he did eighteen or twenty ballots, because the inspection at Osgoode Hall held on the 24th March, following, discovered only three of a difference from the statement made and signed as aforesaid by the said Pritchett at the close of the poll, and because as the commissioners find no one had access to the said box and papers after the delivery thereof to the said returning officer except the said returning officer and the clerk of the crown in chancery, neither of whom tampered in any way with the said box and papers.

The result of the voting at this poll according to the statement of the said Pritchett was twenty-seven of a majority for Donald McNish, the result of the inspection at Osgoode Hall aforesaid was to reduce this majority to twenty-four. This vote, however, was entirely disregarded and not counted by the returning officer when he cast up the number of votes for each candidate in pursuance of the statute in that behalf for the reason that the returns of the said Pritchett were not properly made up.

The commissioners are of the opinion that some person or persons undiscovered to them conceived the plan of securing the appointment of the said Pritchett as deputy returning officer with the avowed object of corruptly and illegally securing the election of the said Donald McNish or helping towards that end.

The said John G. Pritchett throughout the day of polling and prior thereto falsely assumed the name of the said Marshall B. Johnson, and practised deception on the said returning officer and the officials and persons in connection with the proceedings at the said poll, all of whom were imposed upon and deceived by him. Under all the circumstances, and in view of the fact that he admitted having sworn to affidavits which were in some particulars contrary to the fact, the commissioners cannot rely upon the evidence of the said Pritchett.

ST. THOMAS No. 1, 2, 3, 5, 6, 9, 10, 14.

In these divisions there were no irregularities in the appointment of any of the deputy returning officers, none of the deputy returning officers acted as such at any one of these divisions without lawful authority so to do in pursuance of the statute in that behalf.

There were no irregularities in the return of any one of the deputy returning officers in these divisions of the ballots and other papers in connection with the said election, but on the contrary the conduct of the returning officer, the deputy returning officers, the poll clerks and any and all others at all these polling places was regular and proper and the proceedings in all and every respect conducted according to law. But in division No. 1, St. Thomas, two brothers, viz. : Noel and Hubert Lumis were entitled to vote. Noel presented himself first and voted as Hubert when in fact he was Noel. When Hubert subsequently came to vote he was offered a ballot and told his ballot would be accepted as a tendered ballot. He thereupon refused to vote.

Mr. Nicolas McCaul the agent for the Conservative candidate makes complaint of this, but he fairly admits that the unfortunate incident happened in consequence of the deafness of the said Noel Lumis who probably said " yes " when asked if he was Hubert, he not understanding correctly the question that was asked him.

In regard to No. 6 St. Thomas, it is alleged there was a case of personation. The person who presented himself was sworn and then voted. A complaint is made that the deputy returning officer, Mr. Ezra Stubbs, refused on the request of Mr. Irving Armstrong the Conservative agent, to arrest the alleged personator—Mr. Stubbs firmly denies that the request for arrest was made—Mr. Armstrong as firmly states it was made, but the latter himself suggests a doubt that Mr. Stubbs heard this request, and we are of opinion that if Mr. Stubbs had heard it he would have complied with the request.

In regard to No. 5 St. Thomas, the objection was taken to the counting of one particular ballot in regard to which a dispute arose as to whether it was marked with the letter " T " or with a cross. The deputy returning officer allowed the objection that the ballot was a bad ballot against the protest of Mr. Clyde Dunbar the agent for Mr. Mc-

Diarmid, but Mr. Clyde Dunbar fairly states as follows :—"I think he (referring to the deputy returning officer) did his work honestly only he allowed himself to be influenced in that (referring to this particular ballot) I believe he thought the ballot was wrong," so that on Mr. Clyde Dunbar's statement the said deputy returning officer acted in the honest belief that he was right.

ST. THOMAS No. 4.

The returning officer had named one McConnell who was a fit and proper person to act as Deputy Returning Officer in this division and said McConnell had agreed to act, but between the hours of 12 and 1 on the day before the day of polling he declined to act giving as his reason that he wanted to act as Scrutineer in his own polling subdivision. Later on Mr. Thomas Coleman called in company with a man whose identity the Commissioners have not been able to trace or discover, and introduced the latter to the said returning officer under the name of Christopher Stratford. A voter of that name appeared on the voters' list as a railway employee and as such the said man introduced himself to the said Thos. Coleman. The said man presented a letter to the returning officer alleged to be signed by the said Donald McNish in all respects the same "*mutatis mutandis*" as the letter used in the case of No. 6 Southwold.

The said returning officer after examining the voters' list and ascertaining therefrom that Christopher Stratford was a voter and relying also on the letter from the said Donald McNish appointed the said man as deputy returning officer and swore him in believing him to be the said Christopher Stratford.

The poll clerk was one Peter Ellacott appointed by the said man assuming to be Christopher Stratford on the representation of one Daniel McIntyre, but he the said Peter Ellacott was not sworn in before acting nor were the agents for the respective candidates.

After the close of the poll the said box was not returned to the returning officer until the evening of the 13th of January the night after the day of polling and then it was carried to him by one Henry Langman, a resident blacksmith, who got it from the office of John R. Donahue where it was left the night of the polling by the said man who assumed to be the said Christopher Stratford.

There is no evidence indicating that anything further occurred at this poll that was improper.

Mr. Percy Hensinger representing the Conservative candidate in referring to the deputy returning officer states as follows : "As far as I saw he did everything straight—He was watched very closely."

The other Scrutineer on behalf of Mr. McDiarmid was a Mr. Campbell whose evidence was not forthcoming but Mr. Hensinger states that "Mr. Campbell commented "about the opening of the poll, said it had not been opened properly—The poll clerk had "not been sworn in our presence nor the deputy returning officer, and that was all. "That he had not observed anything wrong during the day." His further evidence is as follows :

"Q. All the votes taken? A. Yes.

"Q. Rulings given all right? A. Yes.

"Q. Anything to indicate he (referring to the deputy returning officer) was prejudiced or favorable to one rather than the other? A. No, sir.

"Q. When the poll was closed and the counting started how was that done? The "ballots were turned out on the table to give instructions to the poll clerk to count the "stubs. He counted the ballots in front of all present.

"Q. Could you all see how the ballots were marked? A. Yes.

"Q. Everything open? A. Yes.

"Q. They were properly marked? A. Yes.

"Q. And counted as marked? A. Yes.

"Q. Properly assigned to the candidates? A. Yes.

"Q. Properly put in the box? A. Yes.

"Q. I understand you to say that notwithstanding he was a stranger and you were "suspicious of him the result of your watching there was that you did not observe any "thing wrong? A. That is so.

Q. And your suspicions were aroused—did you see anything? A. No, sir.

ST. THOMAS No. 7.

The returning officer had selected as his deputy returning officer for this division one W. W. Coulter. The day before the day of polling one Daniel McIntyre accompanied one Edward D. Croden, a resident of London, to the returning officer and informed the latter that the said Coulter could not act as he was to act as an outside scrutineer for Mr. McNish and thereupon introduced the said Croden to the said returning officer as the person who was to take the place of the said Coulter. At the same time the said Croden presented a letter alleged to be signed by the said Donald McNish, which letter was directed to the said returning officer and in all respects was the same "*mutatis mutandis*" as that heretofore given in this report under Southwold No. 6. The said returning officer relying on this letter and the aforesaid introduction by the said McIntyre appointed the said Croden deputy returning officer for this division and he was duly sworn in. Later in the day and after the said Croden had received his box with all necessary papers the said returning officer discovered that the said Croden resided in London and thereupon informed him that he could not act as his deputy. The said Croden, however, professed to assert his right to act having been sworn in and having the said box and papers, and the said returning officer thereupon made no further objection. The said Croden improperly and illegally enlarged the aperture or opening in the ballot box and professed to drop in the ballot papers in one fold only. Having received the ballot papers from the electors he the said Croden in some cases improperly or unnecessarily refolded the same with one fold that he might discover how the electors voted. That he improperly refused permission to the agents present to see the ballots giving as his excuse that having seen them once they were not entitled to see them a second time. At this time he had placed them with their printed faces up, which was in accordance with the Statute so that from this circumstance and from the evidence it is clear that the agents could have seen them had they exerted themselves.

The ballot box was not sealed at the close of the poll nor were the envelopes sealed and in some cases the envelopes were not even fastened.

The box with its contents was returned to the returning officer the evening of the day of the poll and there is no evidence that the ballot box was tampered with from the time the poll was closed until the counting and inspection of the ballots at this division which took place at Osgoode Hall verifying the return of the deputy returning officer, so that the proceedings at the poll although irregular do not appear to have affected the result.

ST. THOMAS No. 8.

The returning officer appointed and swore in one John R. Donaghue, a citizen of St. Thomas, as deputy returning officer in this division. On the morning of the day of polling the said Donaghue claimed to be too ill to risk a whole day's confinement in the polling place and having previously appointed one Kilroy to act as his poll clerk, the latter because of the absence of the said Donaghue became entitled to act by virtue of the statute and did act as deputy returning officer in the place and stead of the said John R. Donaghue. It does not appear that the said Kilroy had been duly sworn as poll clerk and therefore his assumption of the duties pertaining to the office of deputy returning officer was illegal and improper. The said Kilroy appointed as his poll clerk one George W. Trumble, but the latter was not sworn in. The said Kilroy was an absolute stranger to the said John R. Donaghue and he did not reside in St. Thomas. Nevertheless it does not appear that anything improper happened during the day.

Mr. Frank E. Waldoch, the Conservative scrutineer representing Mr. McDairmid gives the following evidence :—

Q. How did Kilroy get on? A. All right that day.

Q. You watched him closely? A. Yes, closely.

Q. Did you understand that there were any special duties? A. We had instructions to watch them pretty closely, the deputy.

Q. Did you carry out the instructions? A. I did.

Q. Were the ballots properly initialed? A. They were.

Q. And properly numbered? A. Yes.

Q. And delivered to the voters? A. Yes.

Q. And properly re-delivered? A. Yes.

Q. And were the original ballots as marked by the voter put in the ballot box? A. Yes, as far as I could see.

Q. Did you watch that? A. Yes.

Q. Was there any tampering with that? A. No, he seemed perfectly fair.

Q. Any ruling given during the day? A. None of importance.

Q. Was there any favour or prejudice shown either way? A. No.

Q. When the poll was closed were the ballots properly counted? A. Yes.

Q. Were they shewn to you? A. Everything was shewn.

Q. Did you count them yourself? A. I watched them counted.

Q. Were they properly marked? A. One was marked for McDairmid in front of his name, that was rejected.

Q. That was the only one? A. Yes.

Q. A large vote there? A. I forget now.

Q. Was everything regular as far as you could see? A. Yes.

Q. Anything wrong to report at all? A. Nothing wrong.

Q. Nothing concealed or done secretly? A. No, everything was done perfectly openly.

Q. Any other information you have or evidence you can give? A. No sir, I think not.

Then Mr. Lowry, the other Copservative scrutineer gives the following evidence:—

Q. Did you see him (the deputy returning officer) do anything wrong? A. No sir.

Q. Did you watch him closely? A. Yes.

Q. Can you say positively whether or not there was anything wrong done? A. No, I could not.

Q. To your knowledge was there anything? A. Not to my knowledge.

Q. And you were watching for the purpose of seeing? A. Yes.

Q. Had you acted before? A. No, sir.

Q. Did you help count the ballots afterwards? A. I stood behind Kilroy.

Q. Were they properly marked? A. Yes.

Q. And called off and the box sealed up? A. Yes.

Q. Did you sign the return? A. No, sir.

Q. Did Mr. Waldoch? A. I think he did.

Q. He was asked to? A. I think so.

Q. So I understand from you that everything was open and fair and right as far as you could see? A. Yes.

Q. And if anything wrong took place you did not observe it? A. No, sir.

ST. THOMAS No. 11.

The returning officer appointed one Cahill a resident of St. Catharines as deputy returning officer at this polling division. He did so in the full belief that the said Cahill was A. E. Montgomery whom he personated and represented himself to be. He was introduced to the said returning officer as A. E. Montgomery by J. R. Donahue who had in fact himself been appointed deputy returning officer at this polling division, but who requested to be sent to No. 8 polling division where there was a vacancy as Mr. Cochrane, a traveller, the appointee thereat, had not returned to the city. The said Cahill so personating and assuming to be A. E. Montgomery as aforesaid at the same time presented a letter signed or alleged to be signed by the said Donald McNish requesting his appointment, which letter was the same "mutatis mutandis" as the letter used by the said Pritchett in No. 4 Southwold. The poll clerk in this division was Portwood, a resident of London. He was appointed by the said Cahill who at the time professed to be the said A. E. Montgomery. The said returning officer examined the voters' lists and found the name of A. E. Montgomery as a voter in this division.

An irregularity at this polling place was that during the polling of the first three votes neither the deputy returning officer nor the poll clerk wrote or marked upon the counter foil the number prefixed to the name of the person voting upon the voters' lists in the poll book, but this was corrected almost immediately and was an unintentional omission and no harm resulted therefrom.

Notwithstanding the deputy returning officer personated the said Montgomery the commissioners do not find that anything occurred at this polling place necessary for the commissioners to report.

Mr. Alfred McCowbry a gentlemen sent from London to represent the Conservative candidate at this election, in answer to the question "was there anything during the day the subject of remark" replied "nothing at all, the poll was conducted as well as I ever saw a poll conducted—no fraud at all perpetrated through the ballots—I could see behind the screen—in the marking I saw the ballot from the time it left the deputy's hands until it returned. I kept a tally of them. I stood behind him and saw the face of the ballots and there was nothing at all irregular, only the one little matter of numbering the poll book and the ballot," And further on when asked "so you vouch for the correctness and accuracy of everything that was done," answered "yes."

ST. THOMAS No. 12.

In this polling division there was no irregularity in the appointment of the deputy returning officer. No person acted as such deputy returning officer without lawful authority so to do in pursuance of the statute in that behalf. There were no irregularities in the return of the deputy returning officer of the ballots and other papers, but on the contrary the conduct of the returning officer, the deputy returning officer, poll clerk and all others in said polling place and in connection therewith was regular and proper, and the proceedings thereat in all respects conducted according to law, but a man personated one George Aitkenson, a voter. He received a ballot and voted. When the real George Aitkenson came to vote the mistake was discovered. He was then given a ballot and his ballot received and taken as a tendered ballot. There were two rejected ballots, one of which was for the Liberal candidate and one for the Conservative candidate, and both properly rejected.

ST. THOMAS No. 13.

In this polling division there was no irregularity in the appointment of the deputy returning officer ; that no person acted as such deputy returning officer without lawful authority so to do in pursuance of the statute on that behalf. There were no irregularities in the return of the deputy returning officer of the ballots and other papers, but on the contrary the conduct of the returning officer, the deputy returning officers, poll clerk and all others in said polling place and in connection therewith was regular and proper and the proceedings thereat in all respects according to law.

A certain person, however, unknown to the commissioners claimed to vote as Edward C. May. He took the oath after which the deputy returning officer issued a warrant for his arrest and he was arrested.

The commissioners find that the said Donald McNish was not in any way associated with or cognizant of any of the fraudulent practices aforesaid, nor did he knowingly assist therein ; but we find that he did sign certain documents being the requests aforesaid to the returning officer to appoint deputy returning officers, one of which requests is given verbatim in the report on No. 6 Southwold. These requests aided in the fraud and deception practiced upon the returning officer in the appointment by him of his deputies. The commissioners however find that such documents were placed for his signature amongst a great number of scrutineers' authorities required by law to be signed by the said candidates and he when he so signed the said scrutineers' authorities, inadvertently signed the requests aforesaid, and without any knowledge or intention on his part that a wrongful or improper use of the same would be made.

At the instance and by the request of the said Donald McNish, one Alexander Smith, the secretary of the Ontario Liberal Association, and W. T. R. Preston, a former secretary of the said Association, went into the electoral district for the purpose of promoting the election of the said McNish. The said Preston admits that he procured the assistance for the said purpose of four outsiders, namely, D. F. McDonald, J. J. Bell, one Sullivan, one Hoppins, and the said Smith secured the services of one Vance. The commissioners cannot trace to these persons or to any of them any knowledge of or participation in the fraudulent and illegal practices hereinbefore related.

The commissioners find that the returning officer was imposed upon by the persons hereinbefore mentioned, who wrongfully procured appointments as deputy returning officers under assumed names and by the fraudulent and improper use of the aforesaid requests so signed as aforesaid by the said McNish. The commissioners find that the returning officer acted in good faith and without any knowledge of the frauds and the wrongs that were being perpetrated upon him and without any reason to suspect fraudulent or wrongful acts, he making his appointments in the belief that the persons he so appointed were in reality the persons they represented themselves to be. All of the persons so intended by him to be appointed as deputy returning officers and whom he thought he was appointing were fully and properly qualified to perform the duties pertaining to the office of deputy returning officer. Notwithstanding, however, that he acted as aforesaid without knowledge of the wrongful and fraudulent representations and false personations, the commissioners are of the opinion that he, the returning officer, should have exercised more independence in his selection of his deputies and, in making his appointments, should not have acted on the recommendation and introduction of persons entirely unknown to him when further inquiry would have detected the imposition which was practiced upon him and rendered impossible the false and fraudulent personating heretofore set out.

The said Pritchett testified that he received the sum of \$25 from one O'Gorman for the illegal and fraudulent part he had taken in the said election, and that subsequently he was paid further sums of money by the said O'Gorman and by one Lewis through his brother-in-law, one Hastings of the City of London. In as much as the said Pritchett is contradicted on oath by the said O'Gorman and the said Lewis and is also contradicted by Francis Hunt and John Lyle, prominent and reputable citizens and residents in the electoral district, and in as much as the attendance of the said Hastings before the commissioners could not be secured, although all reasonable efforts to procure his attendance were made, it is impossible for the commissioners to make any finding as to facts the existence of which depends on the uncorroborated testimony of the said Pritchett, distinctly denied as it is as aforesaid.

The commissioners desire to place on record their appreciation of the valuable services rendered them in the discharge of their duties by Mr. G. H. Watson, Q.C. and Mr. Wm. MacDonald, Q.C., who, in the opinion of the commissioners, have exhausted the resources at their disposal to procure all available testimony calculated to assist them in their enquiry and investigation, and they are pleased to draw attention to the care and accuracy with which Mr. P. Hamilton discharged the duties of stenographer and registrar of the commission.

All of which is respectfully submitted.

JOHN A. BARRON,
E. MORGAN,
D. B. MAC TAVISH.

Dated this 30th day of June, 1900.

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#10. 20-20
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RE WEST ELGIN ELECTION

INVESTIGATION

EVIDENCE

TAKEN AT TORONTO

AND RULES



TORONTO:
WARWICK BROS & RUTTER, PRINTERS, &c., &c., 68 AND 70 FRONT STREET WEST.
1900.



RE WEST ELGIN INVESTIGATION.

EVIDENCE TAKEN AT TORONTO AND RULES.

COURT HOUSE, TORONTO,
Thursday, February 8th, 1900.

Re West Elgin Commission.

His Honor Judge Morgan, His Honor Judge Barron and His Honor Judge McTavish, the Commissioners appointed by Royal Commission, dated day of January, 1900, met to-day and entered upon the execution of the Royal Commission directed to them as Commissioners.

The Commissioners were attended by Mr. George H. Watson, Q.C., and Mr. R. A. Grant, who have been appointed to represent the Crown as legal officers to assist in the execution of the commission.

After consideration of the Commission and the directions therein given to the Commissioners as to the nature of the investigation thereby directed and matters arising and involved in connection therewith, the Commissioners concluded that in order to expedite and to facilitate the proceedings it would be well at the outset to formulate certain rules in respect to procedure and for the guidance of the Commissioners and for the guidance of all other parties interested.

The Commissioners therefore formulated and adopted the following rules :—

1. The Commissioners will meet at at such times and places as may be deemed convenient and necessary for the purposes of the commission as may be hereafter appointed by them.

2. The Commissioners will direct notice to be given to officials and persons referred to in the commission and within the scope of the investigation thereby directed of meetings at which evidence will be heard affecting such officials and persons.

3. All statements made to the Commissioners at meetings of the commission in the course of the investigation shall be so made under oath first administered to the deponent by one of the Commissioners (saving and excepting statements and addresses of counsel).

4. Evidence in aid and furtherance of the commission and the investigation thereby directed shall be presented before the Commissioners by and through Counsel nominated by the Crown.

5. Officials and persons whose conduct and acts are the subject of inquiry and investigation by the Commissioners shall, if so advised, be entitled to be represented before the Commission by Counsel and such Counsel shall be heard in respect to evidence and matters affecting the persons so represented.

6. All persons having charges to make against officials and persons within the scope of the commission, or having information in their possession which is material to be known and will assist the Commissioners in their investigation, are requested to furnish particulars thereof in writing as soon as possible to the Counsel for the Crown for the purpose of enabling such Counsel to prepare and produce evidence thereof before the Commissioners.

7. Such further rules, regulating the proceedings before the Commissioners shall be made from time to time as may be found necessary to expedite and assist in the execution of the commission and in the investigation thereby directed.

Counsel for the Crown stated to the Commissioners that he had been informed that the ballots, poll books and records relating to the election referred to have been long since destroyed and that the Officials and persons in whose charge the said ballots, etc., etc., were placed are not now able to produce the same. The Commissioners deem it to be proper and expedient and

necessary for the purposes of the investigation under the Commission at once and prior to the hearing of the evidence to enquire of the Officials and persons in whose charge the said ballots, etc., were placed as to the existence or non existence of the same and the reasons for the non-production thereof and by and through whose acts the said ballots, etc., were destroyed; and Counsel for the Crown is requested to notify such Officials and persons that such investigation will proceed forthwith, and further that in the course of such investigation the Officials and persons concerned shall be entitled to be represented and heard by and through Counsel if so advised.

PARLIAMENT BUILDINGS, TORONTO,

Friday, Feb'y 9, 1900.

Present : Messrs. WATSON and GRANT.

His Honor the CHAIRMAN : How far can we investigate the case of others than parties mentioned in the Commission.

Mr. WATSON : I understood that was dealt with yesterday and was concluded by resolution and direction then made. I understood a direction was made yesterday after my statement to the Commissioners that the ballots, poll books and records relating to the elections in question had unfortunately, through accident, been destroyed, and in as much as the acts and conduct of the different officials and officers referred to in the Commission relate largely and are connected with the method of handling ballots and marking of them, and the disposition made thereof afterwards—that is the foundation of the enquiry as to the officers and persons referred to and incidents to that are the acts of other persons and officials who have had these ballots and documents in their custody and possession. The ballots and records, as we all know under the statute, are returned to the officials at the Parliament Buildings here, and the accident having occurred by which these have been lost it is surely incident to the commission that you are to inquire as to the existence or non-existence of these ballots and papers, and as to the acts leading to their destruction, and on behalf of the Crown I may state that my instructions are that the commissioners would undoubtedly deal with that subject matter, and it was in contemplation of the Crown when the Commission was issued that the investigation would proceed and investigate this matter as well as the other matters expressly referred to.

His Honor the CHAIRMAN : That is your statement to us yesterday as to the ballots. I have been thinking over it. Suppose we were to issue subpoenas and they were to say that they would not obey the subpoenas, being outside the scope of our commission. Then what?

Mr. WATSON : I do not think that is at all likely to occur. I am glad to report to you that we have endeavoured to carry out your suggestions of yesterday and we have given notice to the officials here to enable them to give you the necessary information and I do not anticipate any difficulties in the way of getting the information. At any rate the Commission has decided it is a matter for investigation under the Royal Commission. This is known generally to be a public enquiry, in which the general public are also interested and have a right to be heard.

His Honor Judge MORGAN : I think no doubt it is a matter absolutely incident to the proper performance of our duties to have either before us all the ballots and all the records which were in existence at the time of the closing of the polls and of the declaration of the return of the member at that election. We are bound, I think, to enquire for these things and have them produced. We have made that enquiry from the Crown Council as to whether they can be produced and he has told us that through some causes they cannot be produced, so I think it is our duty before proceeding with the real subject matter of the Commission to find out where these ballots are, if in existence; if they are in existence why—or why not—they cannot be produced, and if they cannot be produced because not in existence, why they are not in existence, so when we come to the real subject matter of the Commission we will have the facts as to these ballots and records so we will be able to admit any evidence secondary or otherwise concerning them or their contents if necessary to enquire into their contents.

Mr. WATSON : Mr. Chairman, with your permission, as a preliminary I propose to call your attention also to the chapter—of the Act of the Legislature under which the Commission issued, Chapter 19 of the Revised Statutes of Ontario (reads the whole chapter).

Then, if you will allow me, I refer you especially to the matter under consideration this morning, that the ballots and papers had unfortunately been accidentally destroyed some time ago—I refer you to the provision of the Election Act, chapter 9, R.S.O. sec. 137. (Reads the section.)

Under this express provision of the Act it is the duty of the Clerk of the Crown in Chancery to destroy all these ballots and returns and the record as they are sent in to him at the expiration of one year, unless an order of the Court is made to the contrary.

The ballots and records in regard to this election were regularly returned to the Clerk of the Crown in Chancery, and as far as I am advised there was no irregularity in respect of such return so far as the returning officer is concerned, and the documents and records reached the office here in the regular course.

After that the election petition was filed under The Controverted Elections Act, and proceedings taken under that and the ballots and records were then transmitted by the Clerk of the Crown in Chancery to the office of the Registrar of the Court of Appeal for the purposes of inspection under the rules of the court. The ballots were there and were inspected from time to time as was deemed necessary and gone over by the petitioner and respondent. After inspection by all parties interested—that is by the petitioner, respondent and their several agents, counsel and solicitors, they were returned to the office of the Clerk of the Crown here and subsequently I learn there was an unfortunate accidental destruction which is now the subject of your investigation.

His Honor the CHAIRMAN : They are destroyed at the end of the year.

Mr. WATSON ; Colonel Clark will be able to explain that. If I may suggest I would like for your information and clear ascertainment of the surroundings that you would be pleased to accompany the Clerk of the Crown in Chancery to the place where these are usually kept and to make an inspection of the vaults and places where they are kept and destroyed.

The Commission then adjourned.

Inspection made as suggested during adjournment.

PARLIAMENT BUILDINGS, TORONTO,

Friday, 9th February, 1900.

After further argument and inspection of vaults, Mr. Watson calls James A. Robertson.

JAMES A. ROBERTSON sworn and examined by Mr. WATSON saith :

Q. Mr. Robertson you are in the employment of the Government here ? A. Yes sir.

Q. And you have been in service here for about what length of time ? A. Since 1893.

Q. You were then in the old Parliament Buildings ? A. Yes sir, for a while.

Q. And you are a man about thirty-five years of age ? A. Thirty-nine.

Q. You have had notice given you of this investment ? A. Yes sir.

Q. Do you desire to be represented by counsel ? A. No sir.

Q. Are you an assistant to Colonel Clark ? A. Yes sir, in looking after the ballots.

Q. And in charge of the ballots ? A. Yes where the ballots are kept, of course I don't handle any key.

Q. Who keeps the key ? A. Colonel Clark, the Clerk of the House.

Q. And have you been in that position, having charge of such papers and documents and records for any length of time ? A. In elections since we came up here in 1893 I took charge of the burning all that time.

Q. That was a part only of your duties ? A. Yes sir.

Q. You have other duties about the place ? A. Oh, yes.

Q. Have you any knowledge in years prior to the last year, that is prior to 1899, of the destruction of the ballots from time to time ? A. Yes, we destroyed them when the time was up.

Q. Have you received directions in respect of such matters in other years ? A. Yes, the same directions as I had this year.

Q. So that you had work to perform and duties to attend to in respect of that work for years past ? A. Yes, sir.

Q. From whom did you receive your instructions ? A. From Colonel Clark, the Clerk of the House for that purpose.

Q. Did you receive any such instructions from him during the year 1899 ? A. Yes, sir.

Q. Can you tell about what date—what month ? A. April. I think about the 13th, on a Wednesday I know.

Q. Usually how long did it take to sort out and to destroy these ballots ? A. About two days or two days and a half, depends on the fire. Sometimes we have two boilers ; sometimes only one.

Q. Be good enough to state to the Commissioners what instructions you received in April last year from Colonel Clark ? A. My instructions was to go down and take charge of the vault and look after it, and see that the right ballots was taken out ; he left me in charge of the vault.

Q. To see that the right boxes were taken out ? A. Yes, sir.

Q. That would be for the election taking place on the 1st of March, 1898 ? A. Yes, sir.

Q. The vault is in the basement ? A. Yes, sir.

Q. And it is a large vault ? A. It is a long vault—not very wide.

Q. In that vault at that time—April—about how many boxes were there in the vault ? A. Somewhere in the neighborhood of one hundred or a little over.

Q. Were all of the boxes there containing returns from all the constituencies from the general election ? A. Yes sir, and from a number of bye-elections too.

Q. Of course a separate box for each return ? A. Yes, sir.

Q. When you went to the vault on that occasion did you find it locked or not ? A. It was locked.

Q. Were the boxes closed or not ? A. The ballot boxes were all closed.

Q. Were they locked? A. No. Sometimes they are, it depends on what kind of boxes; some come in bags, some in paper parcels and often there are boxes you can't tell where they come from.

Q. Are the boxes all marked on the outside with the name of the constituency or not? A. That is if we know where they come from—lots of times they come in you have to guess where they are from.

Q. When the boxes reach here are they usually marked? A. We mark them ourselves.

Q. But when they come to your hands are they marked? A. Some of them are marked, and we put a larger pencil mark on; those that are not we don't, because we cannot open them till they are to be burned.

Q. Some are marked with the name of the constituency and some are not, is that right? A. Yes, that is right.

Q. At that time, you say there were about one hundred boxes? A. One hundred, anyway, boxes, bags and parcels.

To His Honor Judge MORGAN:

Q. There were one hundred bags, boxes and parcels containing what you understood to be election ballots? A. Yes, sir.

Mr. WATSON:

Q. Have you any recollection as to whether or not the boxes, or papers, or bags containing the returns from West Elgin bye-election had been removed from the vault before that time? A. No, sir; it was there at that time, I am sure of that.

Q. Had it been taken away before? A. Yes, sir, to Osgoode Hall.

Q. You say that prior to that time the box—was it the box from West Elgin? A. Yes, sir.

Q. It had been taken to Osgoode Hall? A. Yes, sir.

Q. How do you know? A. I took it there myself.

Q. By whose direction? A. The Clerk of the House.

Q. How long before the 30th had you been given that direction? A. It must have been three or four weeks before that—three weeks anyway.

Q. Did anyone accompany you in taking that? A. No, sir, just the hackman.

Q. To whom was it delivered? A. To the Registrar in Osgoode Hall.

Q. Was it ever returned, to your knowledge? A. Yes, sir.

Q. When? A. It was returned on Saturday—I just forget the date.

Q. How long before the 13th April? A. I don't remember whether it was the Saturday before the 13th, I think it may be Saturday a week before.

Q. How do you know it was returned? A. I brought it back myself.

Q. Did you go for it? A. Yes.

Q. Who instructed you to do so? A. When I take them to Osgoode Hall they telephone me or the Clerk of the House to come and get them. The Clerk was not here himself so I went.

Q. So it was at Osgoode Hall about three weeks? A. Yes.

Q. When it was returned here it was through you, you say? A. Yes.

Q. When you brought it back what did you do with it? A. I put it in the outer room where we have the vault; there is an outer room to the vault.

Q. Is that fire-proof and safe? A. No, it is not fire-proof.

Q. Was it locked in with the others? A. No, it was separate. I had no key to place it back in the vault.

Q. Was it afterwards placed back in the vault? A. Yes, sir, I notified the Clerk of the House, got the key and placed it back in the vault.

Q. When? A. On the following Monday or Tuesday.

Q. Was it removed from there afterwards before the 13th of April? A. No, sir.

Q. Was the vault locked by you after it was placed in there? A. Yes, sir.

Q. What did you do with the key? A. Returned it to the Clerk of the House.

Q. In what condition was the box at that time? In a different condition than when it first was received? A. Yes, of course it was. It happened to be pried open at Osgoode Hall; the lid was pretty well smashed up.

Q. In the use at Osgoode Hall? A. Yes.

Q. When did you first notice the difference? A. As soon as I went to handle it.

Q. At Osgoode Hall? A. When I was handing it out at Osgoode Hall.

Q. Did any one assist you in that work? A. Only just the hack driver.

Q. Did you make any report to Colonel Clark of your having returned it to the vault? A. Yes, I afterwards reported that.

Q. When you went to the vault on the occasion referred to, which you think was about the 13th April, can you say whether or not the box was then in the vault? A. Yes, it was in the vault.

Q. Where was it there? A. It was the last box that was put in the vault—I put it at the right hand side nearest the door.

Q. Were there any other boxes, bags or parcels there? A. Yes sir, the place was filled up so you could hardly get through.

Q. The boxes that are there do they fill in considerable part of the room? A. They fill up pretty well all the room—some are pretty big boxes.

Q. Were the parcels and boxes containing the returns from the general elections kept in any separate place, from the boxes and parcels containing the returns from the bye-elections? A. Yes, they were kept at one side and the bye-elections on the other. They were pretty close together, you could hardly get through.

Q. When you put by the box containing the West Elgin returns where did you place it? A. I placed it at the right hand side with the other bye-elections.

Q. How near to the door was it? A. It would be within four feet of the door I suppose.

Q. Then that day in carrying out the instructions you received from Colonel Clark were you assisted by any one? A. Yes, by two other men.

Q. Who were they? A. Maurice Halley and Owen Mooney.

A. Any one else? A. No sir.

Q. Were these men with you at the vault? A. Sometimes they were inside the vault because there were boxes I could not handle myself.

Q. Was Colonel Clark about there? A. No, he was in the boiler room—he was when he opened the door of the vault, then he left me in charge of the vault to go to the boiler room.

Q. What did he go to the boiler room for? A. He inspects them there—sees that they are all burned.

Q. That is where the furnaces are? A. Yes.

Q. How are they destroyed? A. The packages are broken up and they are put in the furnace.

Q. Was there any one with him there? A. There would be; I can't say who just now.

Q. Colonel Clark, I understand, was on duty at the furnace during that time? A. Yes, sir.

Q. How far are the furnaces from the vault where the papers are kept? A. In the neighborhood of 100 feet or 75 feet.

Q. Was there any person about there except you and the other men you have named? A. No, sir.

Q. Is that a public place down there? A. It is public in a way, but no one hardly passes there.

Q. There are other people come there? A. Yes, the plumbers and carpenters are down through there.

Q. How are the boxes taken? A. On a truck.

Q. Who put them on a truck? A. Halley and Mooney.

Q. Did you see them put on the truck? A. Most of them I would see.

Q. Who put them out of the vault? A. A good many myself, there were boxes sometimes they put out.

Q. How many boxes or parcels or bags were burned there these two days? A. I suppose close—94 would be burned I suppose.

Q. I suppose there would be more than that, there are 94 constitutencies? A. Some places there would be two parcels. There would be more than 94.

Q. You say that you saw that box containing the West Elgin return for the bye-election when you opened the vault that morning? A. Yes.

Q. Are you sure of that? A. I am sure.

Q. Did any one see it to your knowledge? A. I could not say, those outside the clerk would not hardly know it.

Q. What became of that box containing these returns? A. The only thing I can say—it must have went out of the vault in mistake.

Q. Why do you say so? A. Because there was so many boxes together—I warned the men. Sometimes they would ask me which box to take and I would say “yes” and it may have gone out in mistake that way, being so close to the door.

Q. Was there any box nearer the door than that? A. No, I would not say there was any box particularly nearer the door.

Q. Was there anything to mark the division—any particular place between them? No sir, nothing.

Q. Do you ever make a dividing line that way? A. No dividing line—just by putting them to one side.

Q. Was that box there on the second day of the burning? A. No sir it was not.

Q. How do you know? A. Because we took stock the following morning—the second morning.

Q. Who did? A. The Clerk of the House and myself.

Q. Was that stock taken the first morning? A. No sir.

Q. Why was it taken the second morning? A. We were not quite ready at the furnace, so the Clerk came in and said we would take stock. We had got so many out and could put the others away and he said we would take stock of the bye-elections and put them further back in the vault.

Q. You say you assisted Colonel Clark in doing what? A. In taking stock of the bye-elections.

Q. How did you proceed? A. We shifted each box as he called them out—I shifted and called them out to him. He had a list of the different bye-elections.

Q. You think he took a list in writing? A. Yes, as I shifted them to the other place. As the general election boxes were taken out we had room for them.

Q. Was that box containing the West Elgin returns there that morning? A. No sir it was not.

Q. What became of it? A. The only thing I can explain is it must have gone out in mistake to the furnace.

Q. Had you any knowledge of that? A. No, sir, none whatever.

Q. Was that brought to the attention of Colonel Clark then that it was not there? A. Oh, yes, because it was not there to be read off and I could not read it off when it was not there.

Q. As to the boxes that had been taken out of the vault did any of these remain with the contents undestroyed that night? A. No, sir, everything was cleared away from the outer room that night and destroyed.

Q. Is there any place else that box can have gone to your knowledge? A. No, sir, not to my knowledge.

Q. Had any other men anything to do with taking boxes or parcels out than you and the two men you have name? A. No, sir.

Q. Did you give the men any instructions as to what they were to take out? A. Yes, I warned them not to take out the bye-elections as I said, there were some boxes you could hardly tell where they were from and it may have gone out in that way.

Q. Have you any idea of any other bye-elections being destroyed? A. No, sir, only when I was going through the boxes I would put the bye-elections aside.

Q. Was any other found missing the next morning at the so-called stock taking? A. No, sir, none; we found one that was kind of missing but they were in amongst the other boxes.

Q. Did you find one or two of the bye-elections boxes mixed in with the others? A. May be they got shifted amongst the others.

Q. But after it was done this was the only one found missing you say? A. Yes, sir.

Q. Did you search again the next day amongst the general election returns to find that? A. Yes, sir. I watched it particularly.

Q. You yourself? A. Yes, to see if it was amongst the others.

To His Honor Judge MORGAN:

Q. Was that West Elgin bye-election box marked? A. It was labelled in the first place but by the time it went to Osgoode Hall and back again you could not tell where it was from.

Q. How did you identify it when you opened the vault on the first morning? A. It was a little different from the other and being the first one on the right hand side.

To Mr. WATSON:

Q. You say you had handled it in bringing it back? A. Yes.

Q. On the second day was there any different method adopted than the day before? A. No, sir. Of course, the second day when we started the other bye-elections were put back in the corner, and we cleaned out the rest.

Q. On the first day did you have room that you could put these back? A. No, sir; that was the trouble.

Q. Was the work completed on the second day or not? A. Yes, sir, I think it was.

Q. Were there any general election returns left over after the second day? A. No, sir.

Q. How many boxes or parcels would remain? A. About eight or nine.

Q. Representing bye-elections? A. Yes.

To His Honor Judge MORGAN:

Q. All boxes? A. No; there were some parcels among them.

To Mr. WATSON:

Q. Was there any time during these days that you were not yourself in the vault, especially the first day? A. Only just a few minutes I was away.

Q. You yourself don't know what course was pursued by Colonel Clark at the furnace doors? A. Not of my own knowledge.

Q. Did any accident or occurrence of a similar nature happen before? A. No, sir, not to my knowledge; not in my time.

Q. Do you know of any possible way in which that could have been removed or disappear except in the way you have mentioned? A. No, sir, I don't know of any other way at all.

Q. Were there any other men there who took boxes or parcels or bags from you except the two men you have mentioned? A. No, sir.

To His Honor Judge MORGAN:

Q. You say the box—this particular West Elgin bye-election box—at the time you brought it back from Osgoode Hall had no special distinguishing mark on it? A. No, by the time it got back that was pretty well off.

Q. So that you were able to know it when the vault was opened more by its general appearance? A. Yes, and being the last box I handled.

Q. Was there anything on that particular box which would have enabled the two men who were with you to know it as the West Elgin box? A. No, I don't know as there would be when I explained it to them.

Q. Did you point it out to them as the West Elgin box? A. No, sir, I just said the bye elections were at one side of the vault.

Q. What instructions did you give them as to what boxes they were to take out? A. I handled most of the boxes myself—sometimes I was at the back of the vault and they would ask what to take.

Q. If they took that box out without your knowledge was there anything that you know of by which they could have known it was the West Elgin bye election box? A. No sir, not that I know of.

Q. You had told them nothing about it? A. No sir.

Q. So if they took it out they must have taken it out without reference to the West Elgin bye-election? A. Yes sir.

Q. You say it was somewhat different from the other boxes? A. Yes sir.

Q. Was it similar to the other West Elgin box, the general election box? A. I would not say for certain.

Q. The Commissioners have been into the vault and this ante-chamber; do you recollect whether this bye-election box was set up against the wall or not? A. I would not say right close to the wall.

Q. But it was next the door? A. Yes, sir.

Q. How near was it to the other bye election boxes? A. They came right up to it.

Q. Were they nearer the front? A. No; they were a little further back. The general elections took up both sides of the vault pretty well.

Q. The general election boxes having filled the north side and part of the south side, when the bye-election boxes came in they would naturally be on the south side well up to the front? A. Yes, sir; that is right.

Q. You have no recollection, I suppose, of noticing this box being taken out by these men? A. No, sir; if I had I would have objected to it.

Q. You say they did take some of the boxes out on your instructions? A. Yes.

Q. You say it is possible that they may have taken this box? A. Yes.

Q. There was nothing particular to identify the box? A. No, sir. They were strangers to the box and could not identify it. I noticed the label was gone and the lid broken when I brought it back.

Q. Did you find any of these bye-election next day when you were taking stock—did you find any of them on the north side? A. Not exactly; but just as if they had fallen down on the south side among some of the general election boxes—some were shifted and had not gone out that night.

Q. There is no way in which you can account for the disappearance of this box? A. Only that it must have gone out in the way I say.

Q. There was no way Colonel Clark himself could have identified the box? A. No I don't suppose he could have identified it without opening it.

Q. Of course you don't know what he did in the furnace room? A. No, sir.

Q. Have you no recollection of how many of these general election boxes, parcels or bags were unmarked? A. I would not say for certain, may be 15 or 20 were not marked so we could say for certain.

Q. How would you know they were ballot boxes? A. They are opened at the burning time of course.

Q. You must have had some idea they were ballot parcels? A. They would be marked ballots alright but not the constituency always.

Maurica HALLEY, sworn, saith:

To Mr. WATSON:

Q. You have had notice given you of this investigation? A. Yes.

Q. Do you desire to have anyone represent you in counsel? A. No, sir.

Q. You are in the employment of the Crown here? A. Yes, temporary.

Q. How long have you been here? A. Since '92, I think.

- Q. Your first session was the last session in the old building? A. Yes, sir.
- Q. Has your employment been constant? A. During the sessions only.
- Q. Outside of the sessions what is your employment? Anything I can get around the city.
- Q. You are 55 or 60 years of age? A. I am in my 67th year.
- Q. Were you in service here in April of 1899? A. Yes, sir, part of it.
- Q. Up to what time? A. I think about the 14th or 15th.
- Q. You had been here how long before that? A. From about the middle of January, three months.
- Q. During that time what were your general duties? A. My duty during the session is to the Speaker's Gallery door in the afternoon; in the forenoon I went messages.
- Q. Was the House in session on the 13th April? A. No, it was after the session I remained to help clear up.
- Q. You were a general assistant, then? A. Yes.
- Q. Did you receive any instruction to do any work in respect of the removal of the ballot boxes, parcels and bags? A. Yes.
- Q. From whom did you get such instructions? A. Mr. O'Brien, the housekeeper.
- Q. When did he give you instructions? A. The first day the ballots were being taken up.
- Q. In the morning of that day? A. I think I got the instructions in the forenoon, but we did not commence to take them out till afternoon.
- Q. What instructions did he give you? A. To assist to move the boxes from Colonel Clark's vault to the boiler room.
- Q. In pursuance of these instructions you went there? A. Yes.
- Q. Anyone with you? A. Yes.
- Q. Who was it? A. The first day Colonel Clark was there and Mr. O'Brien, Mr. Robertson and I think a man named Mooney and myself.
- Q. Did Colonel Clark himself give you any instructions? A. No particular instructions.
- Q. What was he doing? A. He opened the vault and let us in and pointed out the boxes that were to be taken to the boiler room.
- Q. Did you see him open the vault? A. Yes.
- Q. It was locked before that? A. Yes.
- Q. What did he point out to you? A. He showed us the general election ballots and he gave instructions to leave the bye-election ballots—that they were not to be taken, and I think they were put to one side on the south side of the vault.
- Q. About how many were there there? A. About eight or nine I think.
- Q. And a large number of others. A. Yes.
- Q. Was the room pretty well filled? A. The north side was piled up right to the door.
- Q. What width is the room? A. No more than 10 or 12 feet I think.
- Q. Were the general election boxes up near the door? A. They came up to the door along the north side.
- Q. Did you see how near the door any of the bye-election boxes were? A. I could not say.
- Q. What instructions did he give you about the bye-election boxes? A. I think he addressed himself to Mr. Robertson in my hearing to put the bye-election boxes to one side, that they were not to be taken.
- Q. Who did the removal? A. Mr. Robertson put the boxes out to the door and Mooney and me took them away.
- Q. Did either you or Mooney go into the vault? We went in at the first but not after we started to take them out. We stayed at the door and laid them on the truck.
- Q. As I understand it you got the box from him at the door? A. Yes.
- Q. Or inside the door? A. We could not get inside the door with the truck, we had to stay outside.
- Q. That being so, they must have pushed along or carried the boxes out? A. They were pushed out by Mr. Robertson.
- Q. Did you identify any particular box—did you pay any attention to know what the names were? A. Yes, I looked over them and saw the address.
- Q. How many of them? A. When we were taking them away I could see what they were.
- Q. What sort of marks were on them? A. Pretty legible addresses on most of them.
- Q. How many were boxes—how many were parcels or bags? A. Most I think were boxes or cases and some bags and some paper parcels.
- Q. These marks upon them, were they made by paint, ink or pencil? A. All kinds of marks.
- Q. As they were handed out to you, I understand, and as you got possession of them there was no calling off? A. No.
- Q. You just got the boxes as you thought should be removed? A. Yes.
- Q. What did you do with the boxes? A. Took them in the boiler room and dumped them over the stairs.
- Q. Did you yourself put them over the stairs? A. I did, with the assistance of Mooney.

Q. Did any one else take any part in that? A. Yes, I think Mr. O'Brien says he was down in the boiler room.

Q. I don't mean that—but between the boiler room and the vault was there any one working at this besides you and Mooney? A. No one I can remember.

Q. Did you see any one else about there? A. Not outside the boiler room.

Q. When they are dumped over that is quite a space they fall. A. Yes.

Q. Was there any box or parcel or bag that you took from the vault that was not put into the boiler room? A. No, sir.

Q. Are you sure? A. I am quite sure while I was there.

Q. What part of the time were you there? A. I was there all the time, the first day but the second day they had started to work before I got there.

Q. I understand you to say no one else carried boxes but you and Mooney? A. I don't think so.

Q. Were you with him all the time? A. Yes.

Q. The two of you carried together? A. Part of the time I held the boxes on the truck and he pulled it, but the second day Mr. Robertson told me to get another truck.

Q. Each of you had a truck then? A. Yes, and when we got crowded at the boiler room I helped to pitch some over.

His Honor the CHAIRMAN :

Q. In pitching them over did you notice any of the names on the boxes? A. Yes, I called out the name to Colonel Clark below as they were pitched over what I pitched over myself.

To His Honor Judge MORGAN :

Q. Did he enter them in a book? A. Yes.

Q. Where is Mooney? A. I don't know.

Q. Is he here? A. Not to my knowledge.

Q. As you delivered them you say someone made a record of what was delivered at the boiler room? A. Yes, sir, Colonel Clark.

Q. Have you any knowledge of a bye-election box being moved that first day? A. No, sir, none whatever.

Q. Have you any knowledge of this West Elgin bye-election box being moved that day? A. No, sir, not outside the vault.

To His Honor the CHAIRMAN :

Q. Did you say it was not moved the first day? A. Not to my knowledge.

Q. Did you notice any box the first day that had the top broken? A. Yes; I think I saw the West Elgin box pointed out, and Colonel Clark said leave it to one side, that the bye-elections were not to be taken out.

Q. That was that morning when you started? A. Yes.

Q. Did you see that box afterwards? A. No, sir, I was not in the vault.

Q. Did you see it on the truck? A. No, sir.

To His Honor Judge MORGAN :

Q. Are you able to say whether all the boxes and parcels and bags were named with the name of the electoral district on them? A. I think so, sir.

Q. Do you know anything special about this West Elgin bye-election box, whether the name "West Elgin" was on it? A. I think it was, to the best of my recollection.

Q. The other witness says he thinks the label was perfectly defaced? A. I think it could be easily identified.

Q. Is it possible that that box could have been taken by you and Mooney to the furnace without you noticing it. A. It might be possible. I did not see it.

Q. But it might escape your notice. A. That is quite possible, but when I helped to put them over the stairway I looked at them to report to Colonel Clark.

Q. That was the first day? A. Both the first and the second.

Q. Do you recollect whether you put many over the first day yourself and called them out? A. I can't recollect.

Q. Who put them over besides you into the furnace room? A. It seems to me a man named Davidson, in the building, was there.

Q. Do you know whether he called out to Colonel Clark what he put down? A. Yes, I think so.

Q. Do you know it of your own personal knowledge? A. I heard him calling out—whoever it was calling them out.

Q. You are quite clear Colonel Clark had a book in which he was marking them down as called out? A. Yes, sir.

To His Honor The CHAIRMAN :

Q. These were dumped over the bannister on to the hard floor below ? A. Yes.

Q. That would break the boxes ? A. Yes ; that was the intention.

Q. So anyone down there could hardly distinguish box from box ? A. Not most of them.

Q. Those that were not contained in boxes, but the parcels would be all scattered ? A. To some extent.

Q. Were they removed as they fell on the floor ? A. Yes, there were two or three men down there.

Q. As fast as thrown down they were put in the furnace ? A. Yes.

Q. Box and wood and everything ? A. No, just the papers.

Patrick O'BRIEN, Sworn, Saith :

To Mr. WATSON :

Q. You received notice of this investigation ? A. Yes sir.

Q. Do you desire to be represented by any counsel ? A. No sir.

Q. You have been employed as housekeeper here ? A. Yes.

Q. For how many years ? A. Going on 17 years.

Q. Here and at the old Parliament buildings ? A. Yes sir.

Q. These men who have testified before the Commissioners, Robertson and Halley and Money, and so on, are under whose direction ? A. Mine.

Q. It is part of your duty to superintend and direct these men ? A. Yes.

Q. Do they have any duty usually to perform under your general directions in respect of the destruction of the ballots ? A. No, that comes from Colonel Clark, he has full charge of it.

Q. You have had a knowledge for years of the annual destruction of ballots ? A. Yes, after the general election or bye-election.

Q. Did you receive any instructions in the month of April last to do anything in respect to the ballots ? A. Yes.

Q. From whom ? A. Colonel Clark.

Q. Can you state exactly when it was ? A. I think the second week of April he spoke about wanting help to get the ballots burned, he wanted it done while we had the extra help in the building on account of the session.

Q. They stayed on for a while afterwards ? A. Generally a couple of weeks.

Q. Did he give you any further specific directions after that ? A. When he was ready to burn the ballots he saw me and I got help. He said he wanted to burn the ballots before he went home that week.

Q. What did he tell you to do ? A. To get the men and have them burned.

Q. Did you do that accordingly ? A. Yes.

Q. Was he there ? A. He was.

Q. Do you remember the day of the week or month ? A. I think Wednesday the 12th we started.

Q. Who was there when you started ? A. Mooney, Halley, Robertson, Colonel Clark at the vault when it was first started.

Q. Who opened the vault ? A. Colonel Clark.

Q. With his key ? A. Yes sir.

To His Honor Judge MORGAN :

Q. Is there any other key ? A. No sir.

To Mr. WATSON :

Q. When he opened the vault what did he say or do ? A. They went in and looked where the bye-election ballots were and left instructions not to allow any of these to be taken to the boilers.

Q. Who was left in charge there in the vault ? A. Robertson.

Q. It is said the two men, Halley and Mooney, were to cart them to the boiler room, who were at the boiler room ? A. Our fireman, a man by the name of Brown, and I think Dan Dalton, a messenger.

Q. Were you there ? A. I was part of the time in the boiler room and at the dump and in the vault occasionally. I helped Halley throw them over the banister, and I think a fireman assisted too.

Q. That is a fall of five or six feet ? A. Yes ; we wanted to burst the boxes.

Q. Who took charge of them as they were thrown down ? A. Colonel Clark kept tally of the boxes.

Q. Some of the witnesses say they were partly boxes, parcels and bags ? A. Yes.

Q. Were they marked on the outside in such a way that they could be identified or not ? A. Some were and some were not.

Q. Those that were marked were marked how ? A. Some with lead pencil, some with a piece of paper pasted on, and some without a mark at all.

Q. How did Colonel Clark find out where they were from when they were not marked? A. He would have to examine the poll books.

Q. Was the work done fast or slow? A. Pretty fast.

Q. Running the trucks over and throwing them over? Yes, and the men at the furnace were as busy as possible putting them in.

Q. Were you at the vault sufficiently to obtain any information as to what packages were put on the truck? A. No, I could not tell; I paid no attention to it.

Q. Did you attempt that day to make any identification yourself? A. Only when I was at the dump throwing them over. Any I happened to throw over I would call over to Colonel Clark, and if they were not marked I would tell him so.

Q. They would go over before he would see them? A. Certainly.

Q. They would be more or less smashed before he would know if they were marked? A. We generally called out.

Q. If there was a box or parcel not marked and that was thrown over he would not attempt to identify it till after it got into the boiler room? A. Certainly not.

Q. And it might be more or less smashed? A. The box would be smashed.

Q. Did you see more than one box thrown over at the same time? A. There would be only one at a time but it was pretty fast.

Q. Did they go unto each other? A. Some of them.

Q. Is it possible for any box or parcel to your knowledge to have gone astray between the vault and the fire place? A. I don't think it was possible.

Q. Was there anyone there who had anything to do with the carrying over except these two men? A. They were the only ones.

Q. Did you see any bye-election boxes, parcels or bags destroyed that day? No sir.

Q. Did you see or have any knowledge of the destruction of this West Elgin box that day? A. Not at all.

Q. Have you any knowledge of what became of it? A. Not the slightest.

Q. Have you any personal knowledge of where it was placed inside the vault? A. No sir.

Q. Then you don't know what became of it? A. No sir.

To His Honor the CHAIRMAN :

Q. Is Davidson in your employ? A. He was not there at all.

Q. Is Dalton still about? A. Yes, Brown is not here.

Q. Have you a man called Davidson? Yes.

To Mr. WATSON :

Q. You are a very intelligent man—what is your idea of what became of this box? A. I think it must have come out with the general rush of the ballots going out.

Q. Then what? A. Went to the fire hole of course.

To His Honor the CHAIRMAN :

Q. While you were there you did not see it? A. I may have seen it but not to know it.

To His Honor Judge MORGAN :

Q. When Colonel Clark opened the vault door who all went in? A. I guess all hands went in.

Q. Who remained in after Colonel Clark went away? A. Mooney, Halley and Robertson, I stayed there a few minutes and then I went to the fire hole.

Q. Did you go inside the vault after that? A. Yes sir.

Q. For what purpose? A. I was just a general assistant.

Q. Did you assist to put in all the boxes out of the vault into the ante chamber? A. No sir.

Q. What were you assisting at in the vault? A. Nothing special, just to see that the work was progressing.

Q. Who was it put the boxes out of the vault into the ante chamber? A. I could not say that?

Q. Do you know whether Mooney and Halley went into the vault to take out boxes or not? A. I think they did.

Q. Halley says not, that they could not get the truck into the vault and they remained outside? A. I think they went in to assist taking out the boxes.

Q. You are pretty positive of that? A. I think there is no doubt of it at all.

Q. From what Halley said it would leave the whole onus of putting out the right boxes on Robertson? A. I think that is a mistake on that point.

To Mr. WATSON :

Q. Where is Dalton now? A. In the building.

To His Honor Judge MORGAN :

Q. You say that Colonel Clark indicated that these bye-election boxes were not to be interfered with? A. Exactly.

Q. Did he point them out? A. I think so.

Q. Did he point out the West Elgin box in particular? A. I don't know that.

Q. You have no reason to know whether Colonel Clark himself had any particular knowledge of this West Elgin box? A. Not that I know of.

Q. You yourself did not know it as an individual box? A. No.

PARLIAMENT BUILDINGS, TORONTO,
Saturday, 10th February, 1900.

Present, Messrs. WATSON and GRANT.

DANIEL DALTON, sworn, saith :

To Mr. WATSON :

Q. How long have you been in service here? A. I came here a year ago last 14th November.

Q. 14th November, 1898? A. Yes.

Q. And what service do you usually perform here? A. Porter at the main doorway.

Q. Did you have any work to do in connection with the destruction of the ballots in April of last year? A. Yes, sir.

Q. From whom did you receive your instructions? A. From Mr. O'Brien.

Q. What instructions did you receive from him? A. He gave me instructions to go down and assist them to put them in the fire.

Q. Put them in the furnace? A. Yes.

Q. Were you there both days? A. Yes.

Q. It occupied only two days it has been said? A. Yes.

Q. Do I understand you were down at the furnace door or the floor above? A. I was on the furnace floor.

Q. Who was down there besides you? A. There was Thomas Burns, Dick Griffiths, Mr. O'Brien there back and forwards, I think that was all.

Q. Burns and Griffiths were firemen? A. Yes, sir.

Q. Were they the men that attended to the furnace usually? A. Griffiths attends to it in the summer time. Burns is an electrician, he was helping.

Q. Was Colonel Clark there? A. He was there and just on the stairway above the floor.

Q. Did you yourself know anything about what boxes, packages and parcels were being burned? A. No, sir, I was just told they were ballots.

Q. Did you have any idea where they came from? A. I knew the room they came from.

Q. D. Did you know the place they came from? A. No, sir.

Q. The constituency? A. No, sir.

Q. I understand they were thrown over from the floor unto the furnace floor? A. Yes.

Q. Some seven feet or more? A. Yes.

Q. After they were so thrown over would there be any way of identifying them, any marked upon them, or do you know? A. There might have been a mark on the boxes, I did not take any notice of that.

Q. What did you do there? A. I just helped throw the contents of the box into the fire.

Q. Were the pieces of boards put into the fire or just the papers inside them? A. Just the papers.

Q. What was done with the bags some of them were in? A. I don't remember.

Q. And the same way with paper parcels, what was done with them? A. They were put into the fire.

Q. Is it the fact or not that you were not at the vault? A. I was at the vault for a little while at first helping them to move around some of the boxes.

Q. Moving them for what purpose? A. I did not know what purpose.

Q. Who was moving them? A. Mr. Robertson.

Q. Anyone else helping him? A. Not while I was there, that I remember.

Q. While you were there did you observe any marks on the boxes, so you could speak of them now? A. I did notice marks at the time, but I did not take any particular notice.

Q. Were you able to identify any particular parcel or bag or box as coming from one constituency instead of another, that you can speak of now? A. There was none I noticed in particular.

Q. Your work, you say, was just at the furnace floor burning them? A. Yes, sir, except while I was a little while in the vault before they took out the boxes.

Q. As you have just spoken of? A. Yes, sir.

Q. During that time did you hear anything said about any particular box, parcel or bag?
A. No, sir, not that I remember about.

Q. Did you hear anything said or see anything done in respect of a bag, parcel or box from West Elgin bye-election? A. No, sir.

Q. Any knowledge of it at all? A. No, sir, not that I remember of.

To His Honor Judge MORGAN:

Q. You know the vault where the things are kept? A. Yes, sir.

Q. How do you get at it from outside the corridor? A. It is opened by a key from the basement hall?

Q. Then do you go right into the vault? A. Yes, sir.

Q. Is it a one-room vault, or two rooms, or what? A. There is a room inside and the vault off it.

Q. Which room were you in? A. I was in both.

Q. Where were the bags and boxes of ballots? A. In the vault.

Q. And that is where you were moving them about? A. Yes, sir.

Q. Did you take any of the packages out of that inside vault into the outer room or assist in doing so? A. I don't just remember now.

Q. Who was there when you were there? A. Mr. Robertson.

Q. Alone? A. He was alone, I think.

Q. Was there no one round there at all besides him and you? A. Not in the vault.

Q. Or in the outside room or in the corridor? A. Not that I remember.

Q. Do you recollect a person called Halley being there? A. Yes, sir.

Q. Where was he? A. He was not there when I was there.

Q. Where did you see him on either of these days? A. He was bringing the boxes, I think, from the vault over to the staircase.

Q. How did he bring them? A. I think it was a truck.

Q. Did you see anyone else besides Halley engaged in that work at all? A. Mr. Mooney.

Q. What was he doing? A. Helping bring them over too.

Q. What about Mr. O'Brien, did you see him? A. He was back and forward.

Q. When you and Robertson were in the vault neither Halley or Mooney were in the vault then? A. Not that I recollect.

Q. And you have not any positive recollection whether you took any packages from the vault to the outside room? A. I just remember moving them about with Robertson.

Q. Where did you go then? Down to the furnace floor.

Q. Who sent you there? A. Mr. O'Brien.

Q. When was it you first saw Halley and Mooney about after you went to the furnace or before? A. I think it was after.

To His Honor The CHAIRMAN:

Q. Were any of the boxes made of tin or all of wood? A. Wood as far as I can remember.

WILLIAM DAVIDSON, sworn, saith:

To Mr. WATSON:

Q. How long have you been in the service up here? A. Since 1893.

Q. What are your duties? A. Messenger.

Q. Under whose direction? A. Under Mr. O'Brien.

Q. Messenger to the Legislature? A. Yes, sir.

Q. Are you here the whole year round? A. Yes.

Q. Outside of the sessions how are you engaged? A. I am generally at the west end.

Q. Had you any work to do in connection with the burning of the ballots in 1899? A. No, sir.

Q. Nothing at all? A. No, sir.

Q. One of the witnesses yesterday mentioned your name as being one of the parties engaged in working there—Halley—were you working there at all? A. No, sir.

Q. Did you see the work going on? A. No, sir.

Q. Did you know it was going on? A. No, sir, I did not.

Q. Have you any knowledge about it at all? A. No, sir, no knowledge at all.

Q. You say you were not there and did not see it being done? A. Yes.

Q. Then it must be a mistake? A. It must be a mistake.

CHARLES CLARK, sworn, saith:

To Mr. WATSON:

Q. You are the Clerk of the Crown in Chancery? A. I am.

Q. And you have occupied that office—? A. Since about 1893.

Q. You are also Clerk of the Legislative Assembly? A. Yes.

Q. And you have occupied that office during the same time? A. Yes, both are comprised in one by the Statute.

Q. Under the provisions of the Statute you are aware of course that it is your duty as Clerk of the Crown in Chancery at the expiry of a year from the time the returns are made from the constituencies, to burn the ballots? A. That is my duty.

Q. And you have been accustomed to perform that duty? A. Regularly.

Q. During all the time of your office? A. Yes, sir.

Q. Have you a stated time within which you do it? A. I presume the Statute covers the holding of the ballots by me for twelve months after are received by me and at the end of this twelve month I have invariably burned the ballots papers.

Q. Where have the ballot papers been kept by you? A. In a vault in the basement of this building.

Q. Are they in your custody? A. Exclusively in my custody. I retain the two keys with which you enter the vault. I carry them with me always.

Q. Are these the only keys giving access to the vault? A. Yes.

To His Honor Judge MORGAN :

Q. You first go into the ante chamber and then into the vault when you say two keys? A. I mean two keys for the vault itself.

Q. And both these keys you keep? A. Yes.

To Mr. WATSON :

Q. Is anything else kept in that vault except the ballots and returns from the constituencies? A. Nothing but election papers. There are some few blanks.

Q. It is devoted solely to election returns and forms? A. Yes exclusively.

Q. How long has that been so? A. Since our occupation of this building.

Q. What about that room, is it fire-proof, or supposed to be? A. The inner vault is supposed to be fire-proof.

Q. Is there any other access to it than through the door of which you have the keys? A. No, none.

Q. When were the general elections for the Legislature? A. On the 2nd February and 1st of March, 1898.

Q. How soon after did the returns come in? There is a vast difference between the returning officers. Some are very prompt, others delay.

Q. When did the year expire, according to your computation? A. About the beginning of April; the exact date I don't know.

Q. The House continued in session till when? A. Till the first of April, then we had arrears of work to make up.

To His Honor The CHAIRMAN :

Q. The year was up on the first of March for all the constituencies? A. Some came in on the 15th of March, some on the 11th. I presume the time had expired by the first of April, at any rate.

To Mr. WATSON :

Q. On the first of April you had them in your possession for a year? A. Yes, sir.

Q. What is this book you produce, exhibit 1. A. It contains particulars of each return.

Q. It starts with the date of the issue of the writ; the date of the return of the writ; dates of publication and the date of the return of the returning officer? A. Yes, sir.

Q. You say that the time was up on the first of April? A. Yes.

Q. Please look and see whether the West Elgin is here—the general election, the general election return was——? A. 21st April the ballot papers were received by me on that date; so on the 21st of April, 1899. I had them in my possession a year.

Q. You were a little too soon? A. In that special instance.

Q. Where is the West Elgin bye election return? A. Here it is.

Q. Writ issued 20th December, 1893? A. Yes.

Q. And the return of the writ was the 19th January, 1899; the polling was on the 12th January, 1899? Yes.

Q. Then you received the papers—? A. On the 24th January, 1899, and they ought not to have been destroyed till this January.

Q. How did you receive these papers? A. I presume in a box.

Q. Did you have a personal knowledge of the receipt of them? A. Yes.

Q. Have you a personal recollection? A. Yes; I received them personally, that is with the assistance of Robertson; I saw them deposited in the vault.

Q. Do you know what was done with them when received? A. They were placed in the inner vault, the locked vault.

Q. Please say by whom? A. I opened the vault and Robertson placed them in.

Q. They were in a box you say? A. Yes.

Q. At that time was the box marked in any way? A. It had my address upon it and a statement that it contained the papers connected with that election.

Q. Can you recall whether that was on the top or side of the box? Was it printed or painted? A. Written on white paper pasted on the box, the top I presume.

Q. How long did the ballot papers in that box remain in the vault at that time? A. "Papers sent to Osgoode Hall on the 16th March, 1899." The election was protested.

Q. Under whose direction were they sent there? A. Under receipt of an order.

Q. Is this the order that you received directing you to transmit these papers to Osgoode Hall, dated 14th March, 1899? Exhibit 2. A. Yes.

Q. This directs for the purpose of protection and inspection that the boxes, lists, etc., relating to the elections be forthwith delivered and transmitted by the Clerk of the Crown in Chancery to Mr. Cartwright? A. Yes.

Q. And it is ordered that the petitioner and respondent may have inspection—then it names the different contents, used ballot papers, rejected ballot papers, etc. It is further ordered that after three weeks of the date of such documents are delivered that they shall be returned by him to the Clerk of the Crown in Chancery. A. Yes.

Q. That is the usual provision? A. Yes.

Q. In pursuance of this order you did what? A. I sent this box of election papers to Osgoode Hall.

Q. Did you obtain any receipt for them? A. Yes.

Q. On the second page on the margin is the receipt signed by G. S. Grant, an official of the Court? A. Yes.

Q. The 14th March, 1899? A. Yes.

To His Honor Judge MORGAN :

Q. You never opened the box? A. Oh no, I am not permitted to.

Q. So you transmit the box intact? A. Yes.

To Mr. WATSON :

Q. Before the box was sent to the Court was it opened to your knowledge? A. Not to my knowledge, and it could not be opened without my knowledge unless on its way to Osgoode Hall.

Q. In the course of transmission there, did you perform any personal service, did you go to the vault to get it out? A. Yes.

Q. Who was with you? A. Robertson, he had a hack waiting.

Q. That witness yesterday? A. Yes.

Q. Had he been in your employment some time? A. Yes.

Q. How was he regarded by you? A. As a man of decided probity, one in whom I can place every trust.

Q. You say that with his assistance they were sent to the court? A. We always hired a man and he accompanied them and gave them over and took the receipt.

Q. What was done with this receipt? A. It was returned to me.

Q. What was the next thing you did in that? A. A day or so before the expiry of the time when they should be returned I sent down to know if they were done with them. Mr. Robertson went—but the answer was they desired to retain them a day or two longer.

Q. When did you send that message? A. On the Thursday, I think, April 6th. The papers were returned here on Friday, the 7th of April.

Q. How was the return made to you—through whom? A. Robertson brought them back.

Q. Did you send him there? A. I sent him on Thursday, I went home on Thursday or Friday. he said the Registrar informed him they were required a day or two longer. He told me that afterwards the Registrar said the papers had been disposed of and to come and get them back, and he brought them back on the 7th April.

Q. Were you here then? A. No, I went home on the 6th.

Q. Who made the entry in the book? A. I did.

Q. When did you make it? A. When I returned on the Monday following.

Q. Between seventh and the Monday where was the box and the papers? A. They were in the front portion of the outer room of the vault.

Q. Is the outside room of that locked or not? A. It is, a key of which Mr. Robertson has; all the election forms are kept in that outside room.

Q. So I understand from you that Robertson placed the box with the papers in the outer room of the vault? A. Yes, he had no access to the inner vault.

Q. He had a key of the outer room? A. Yes, there are two keys; he has one.

Q. Anyone else got a key? A. Not that I am aware of.

Q. And you would be aware of it? A. I should think so.

- Q. Did you see the box when you returned? A. Yes.
- Q. In what condition was it then? A. My recollection is the address had been obliterated in the opening.
- Q. Opening where? A. It must have been done at Osgoode Hall, it was not opened by us.
- Q. What did you do with regard to the box? A. I put it in the inner safe.
- Q. Did you see that done? A. Yes.
- B. Who was with you? A. Mr. Robertson.
- Q. Anyone else? A. No sir.
- Q. Where was it put in there? A. The papers for the bye elections were kept together and it was placed amongst them.
- Q. On which side were they kept? A. On the south side.
- Q. About how many packages were there of the bye-election returns at that time?
- A. Ten.
- Q. How many other returns were there there in the room? A. The whole general returns.
- Q. There would be about how many separate parcels? A. There would be probably 92—there were two acclamation elections, Russell and South Bruce.
- Q. How are these returns usually made—in what form, boxes, parcels, bags or how?
- A. They are in various shapes; some in packing boxes, some in two bushel bags, and some in paper parcels.
- Q. Is there any means on the outside of identification of any constituency? A. Nearly all, but not with some.
- Q. What is the means of identification? A. In some instances I have actually guessed at the contents. The boxes are got from merchants and I have guessed the contents by the name of the merchant on it; they are brought here by express men whose book states where the parcel is from; then I write upon them in that case.
- Q. I understand from you there is no system or method of marking these packages?
- A. Not by the returning officer.
- Q. Is there by you? A. Where there is any way of knowing where it is from I write upon them as we arrange them alphabetically in the vault.
- Q. Are these packages, parcels or boxes ever opened by you except under direction?
- A. Never excepting on the order from the Court.
- Q. That vault that the Commissioners had the opportunity of seeing with you yesterday would hold how many packages? A. About 100.
- Q. So that in April when the returns were all there would there be much space left?
- A. Not much, because the bye-elections were ten more making more than 100 packages. You had to walk with some inconvenience between them, but the bye-elections were distinctly apart from the others.
- Q. Where was that box placed by you when you came back with Robertson? A. It was placed amongst the bye-election papers, I don't know at which end.
- Q. Have you a recollection now of which side or whether near the door? A. It was near the door because on the morning of the burning I saw it there. I opened the vault before the burning commenced and I saw it there.
- Q. Have you any record in your book of the act of burning? A. I have.
- Q. What is it? A. The ballot papers on the 12th of April were—
- Q. You have a note here in the book? A. "Ballot papers destroyed 12th April, 1899"
- Q. Have you a similar one for next day? A. Yes, April the 13th.
- Q. When did you make these entries? A. As the ballot papers were received at the furnace.
- Q. Had you this book with you? A. Yes and I made these entries at the time.
- Q. What do the ticks mean? A. I have been checking them since.
- Q. Is there any one at all from whom you receive directions as to this burning? A. I have received no other instructions than the Statute.
- Q. In this case did you receive any directions or suggestions from any one. A. Oh no. I think Mr. Dryden is the only member of the Government who knows where the vault is.
- Q. This then was all of your own motion under the provision of the Statute? A. Yes.
- Q. What course did you pursue as to obtaining assistance for the purpose. A. I went to Mr. O'Brien and told him what I was about to do, and I went to the firemen and told them as they had to prepare their fires; that was all I did. Mr. O'Brien secured the help and I took Robertson with me.
- Q. What was the first thing you did that day? A. I opened the inner vault.
- Q. Who was with you then? A. Robertson, Mr. O'Brien, and I think Halley, but I am not sure.
- Q. When you opened the vault did you see this box containing the West Elgin returns?
- A. Yes, I took this list with me at the time. Exhibit 3.
- Q. When did you write that? A. Before we went down the first day.
- Q. You had that with you you say? A. Yes.

Q. Were these bye-election returns there at that time? A. I took this to show Roberton, telling him they were to be retained.

Q. You say that at that time you saw this West Elgin box? A. Yes.

Q. Was it in any different condition than when it was placed there? A. I had difficulty in recognizing it.

Q. Why? A. The want of proper address, it had been torn.

Q. What direction did you give Roberton? A. To retain the whole bye-election papers in the vault.

Q. What else? A. Telling him they must not be destroyed as they would be required again.

Q. What to do with the others? A. To send the others (I did not say alphabetically), but I found when I got to the boiler room they were doing so.

Q. Were there any to be excepted but bye-elections? A. Oh no.

Q. What means of carrying them over was provided? A. A truck and then another one.

Q. Who had charge of the trucks? A. Halley had one, Mooney the other.

Q. Did you know these men? A. Oh yes, they were messengers.

Q. Did you see them there? A. Yes.

Q. Was there any one else engaged carrying packages over? A. Not that I am aware of.

Q. Were you in a position you could see? A. Yes.

Q. How did you know that this box or parcel was not carried outside the door? A. I don't know whether it was or not.

Q. Were you in a position to observe? A. No, because I was in the basement—sometimes at the foot of the stairs—sometimes on the stairs, but always with an eye to the burning of the ballot papers. I was marking down the boxes as they arrived.

Q. Then after you gave your directions in the vault, were you there again that day? A. Not till close of the work.

Q. Where were you? A. I was in the basement the whole time, except I went down without a hat and found it draughty and went and got my hat.

Q. Who were with you there? A. The firemen assisted.

Q. Who were they? A. I don't remember the names; Burns was one.

Q. Did they have anything to do with it? A. They assisted in throwing into the furnace, and one especially assisted Mr. O'Brien in throwing the boxes over—some were very heavy.

Q. There were just two men? A. Burns was one.

Q. What was actually put in the furnace? A. The whole of the papers, sometimes portions of the boxes.

Q. What was done with the bags? A. I gave them to the men.

Q. Paper parcels? A. They went in.

Q. Were there any boxes there that you were not able to identify at that time? A. Well, several I had to identify them by the contents. I opened the poll books, for instance.

Q. I understand you to say that in several instances from what appeared on the outside you were not able to identify? A. Yes.

Q. Why was that? A. Because of the obliteration of the address.

Q. It is said, Colonel Clark, that the men above on the floor pushed these over unto the floor of the furnace room; the boxes and parcels would then be smashed and broken? A. Yes.

Q. Did you see them before they were smashed and broken, or not? A. I did; some were pushed down the stairway.

Q. But some you did not see till after they shifted over? A. I could not say till they were brought to the platform. I did not stand on the platform.

Q. They were actually shifted over before you saw them? A. Yes.

Q. Then before you saw them they would be more or less broken and smashed? A. Yes; Mr. O'Brien announced the name of each box, as a rule, then in every case I identified the box.

To His Honor Judge MORGAN:

Q. When it was obliterated what did O'Brien do? A. Then the box was broken and I took the poll books.

Q. What did they do? A. They said there is no name.

To Mr. WATSON:

Q. I understand you took the poll book after it reached the furnace floor? A. That is right.

Q. How did the work progress—with much speed or slowly? A. As we progressed it became more rapid, but there was no undue hurry.

Q. How many were carried over and destroyed with it? A. About 47, I think.

Q. Did you keep a record in your book? A. I did; I have it here.

Q. Do you find West Elgin included? A. No; the West Elgin papers did not go over till the second day, the general election papers. The first West Elgin box I never saw after seeing it in the vault.

Q. You have West Elgin there on the second day? A. Yes, and East Elgin.

Q. Is there anything to identify whether that was general or bye-election? A. I know it was general election, because I had discovered the bye-election was destroyed the previous day.

Q. Then the bye-election must have been destroyed the first day? A. Undoubtedly.

Q. Look at your list for the first day, are you sure whether or not West Elgin is there? A. Yes, when they first commenced to send down the papers they brought the letter A, and B's and C's they were near the door, but after that they came indiscriminately, but I put them alphabetically for my own convenience.

Q. When did you first become aware that the West Elgin bye-election box had disappeared? A. I am not sure whether it was that night or next morning, but it was after the first day's work.

Q. How did you become aware of it? A. I took stock as they termed it yesterday.

B. Why did you do that? A. Because I thought it was necessary to know if any of the bye-election papers had been destroyed. I did not take stock of the general election papers. I told Robertson to see they were all there.

Q. You went with him? A. Yes, and O'Brien.

Q. Was it evening or morning? A. I am not positive.

Q. What did you do there in the vault that time? A. I examined the bye-election papers remaining there and checked them off at the time, and I could not check the West Elgin papers because they were not there, and I called attention to the fact and you can imagine my feeling of consternation.

To His Honor JUDGE MORGAN :

Q. What is the meaning of the cross here instead of the check. Exhibit 3? A. I don't know. There is nothing significant in it.

Q. What is your theory? A. My impression is the papers were burned in the hurry and confusion. There was a certain extent of confusion as the day progressed we burned more rapidly towards the close.

Q. Your theory is then that in that way—? A. They were destroyed.

Q. Did you speak to Robertson about that when you found it? A. Yes, and to O'Brien.

Q. What did Robertson say? A. I can't say specially, he expressed his regrets then and often since. He was as much annoyed as I at the disappearance.

Q. Did you speak to O'Brien? A. Oh yes.

Q. What did he say? A. Like myself he felt regret that they had disappeared; he knew of the value of the papers.

Q. You realized and appreciated, of course, the responsibility was on you? A. Certainly, I felt I was blameworthy.

Q. Did you speak to any one else except Robertson and O'Brien. A. Upon the return of the Premier, Mr. Hardy—

Q. But at that time? A. Not at that time.

Q. Did you speak to the men who were carrying? A. No, only to Robertson and O'Brien.

Q. Did they offer you any explanation or statement? A. No, they could not make any.

Q. Was there any one else about there who could have taken these away? A. Not that I am aware of. I was not in the vault after the opening of it, I was attending to the destruction of the papers.

Q. Did you speak to any one else about it afterwards? I referred the matter to the Premier on his return.

Q. Where was the Premier at the time of the destruction of these ballots? A. He was away—fishing. I think.

Q. Out of the city? A. Out of the city.

Q. Where were you resident at that time? A. I am resident in Elora.

Q. When did you leave after the burning? A. The burning commenced on the 12th and continued on the 13th; I left after that.

Q. How soon afterwards? A. I would leave Thursday or Friday of that week.

Q. When did you return again? A. The following Monday or Tuesday.

Q. Did you make any report of it to the Attorney-General? A. I did.

Q. In writing? A. I did.

Q. Have you a copy of it? A. Yes, here it is.

Q. Had you an opportunity of seeing him before this? A. No.

Q. Was this on the 12th of May? A. Yes, that is a copy—Exhibit 4.

Q. You then wrote this letter explaining—? A. The fact of the disappearance of the papers.

Q. (Reads exhibits 4.) Then was it written by you from Elora? A. Yes.

Q. Did you get any answer to that? A. I did. It is marked "confidential," but I presume Mr. Hardy won't object. Exhibit 5.

Q. (Reads exhibit 5.) Did you have any other communication from him? A. No, an investigation was ordered by him to be conducted by the Deputy Attorney-General at which myself, O'Brien and Robertson were examined.

- Q. Did you make any statement of the facts then before the Deputy Attorney-General?
A. I did.
- Q. Do you recognize that as your signature—exhibit 6? A. Yes.
- Q. What are these others? A. Those are examinations of Robertson and O'Brien made by the Deputy Attorney-General.
- Q. In your presence? A. Yes, and a statement given by myself at the same time.
- Q. Were there other men about there than the men you had charge of? A. None others than those I have mentioned taking part in the work, there might be a stranger look over.
- Q. Is it possible any one else could get in to take this away? A. I should think not.
- Q. Is it possible they would be able the place there? A. I think not.
- Q. Did you make any investigation? A. I asked if any stranger had been there.
- Q. Have you looked for the papers elsewhere? A. Yes, I imagine they could not be anywhere else, I could not suppose such a thing for a moment.

JAMES S. CARTWRIGHT, sworn, saith :

To Mr. WATSON :

- Q. You are the Registrar of the Court of Appeal? A. Yes.
- Q. And you were Registrar in April of last year? A. Yes.
- Q. Do you recollect an order being made in the West Elgin election for the production of the ballot papers? A. Yes, I looked in the book in the office and made this extract from it (reads exhibit 7).
- Q. The box with the papers in it was at Osgoode Hall for three weeks? A. Between those two days.
- Q. Did you yourself see the box? After it reached there? A. Yes, I attended the inspection.
- Q. Was it closed or open? A. It was screwed or nailed down when we got it.
- Q. Did you see it opened? A. I would not say positively, but it is my recollection I was there when it was opened.
- Q. Do you recollect at that time whether there were any marks upon it to identify it with the West Elgin returns? A. I was trying to think of that. I think there must have been, but I can't now recollect what it was. It might not be very conspicuous.
- Q. Do you remember anything occurring in respect of the want of identification? A. I can't recollect anything that would probably be the only one there at the time.
- Q. Do you recollect whether or not the box was opened carefully without any breaking, or whether there was any breaking? A. I could not say; they send them in rough packing cases, and in some instances in opening the box one of the covering planks might split; if they are nailed with wire nails they will split.
- Q. I see by the memorandum, exhibit 7, there was an inspection of these ballots on the 24th of March? A. Yes.
- Q. Who were present? A. There would be the counsel for the parties or their clerks.
- Q. Counsel for the Petitioner? A. Yes.
- Q. Do you recollect who it was? A. I would not be positive. Mr. M. Pherson, I suppose.
- Q. Then on the 25th there was a further inspection? A. Yes.
- Q. Then on the 29th it was finished? A. Yes.
- Q. So that apparently they were inspected during three days? A. Yes.
- Q. On the 24th, 25th and 29th of March? Yes.
- Q. Were there representatives there of both the petitioner and respondent? A. Yes.
- Q. What does that inspection mean? A. They first of all take out the poll books of the deputies and they look to see the agents and scrutineers; then they look at the book; they take down the returns he made in his poll book; then when they do that they just take all the ballots that have been used if they think well to do so take the ballots apart and separate them into piles for the different candidates; then they count them and see that they agree with the returns of the deputies. If there are any they think require any further consideration perhaps they lay them aside for a minute till afterwards; then they open the packages of rejected ballots, and see who they are marked for and why rejected. As soon as one sub-division is done, put the ballot papers all back.
- Q. They go over every sub-division? A. Yes.
- Q. Every ballot in every sub-division? Yes.
- Q. Is that done in your presence? Yes, according to the Act.
- Q. Who took them out of the box? A. I generally do myself take them out and arrange them so they may be taken in order.
- Q. After that what was done with them? A. I generally took them all out and arranged them in consecutive order, and soon as one is completed put it back in the box. I put the Court of Appeal seal on each package. If it is not all finished in one day I used to lay a large paper over those completed and put the others back on top, so next day I would only take out the top ones.

Q. Where would it be over night? A. Locked up in the vault.

Q. Of which you have the key? A. Yes.

Q. All the ballots you got from the Clerk of the Crown in Chancery were sent back to him?
A. Certainly.

Q. You knew of them returned personally? A. Oh, yes,

Q. Was there anything wrong that you observed at that time in respect of anything—papers or documents? A. No I don't recollect making any remarks at all or suggesting any.

Q. Any further information you can give about it? A. I don't know of anything. I often wondered why they did not have some distinctive marks on the boxes.

To His Honor the CHAIRMAN :

Q. There was no distinctive mark on this? A. Oh, no, my recollection of what come on the boxes generally is a little sort of address about three inches by four, to the Clerk of the Crown from so and so.

To Mr. WATSON :

Q. And if that happens to be defaced, is there anything left as a means of identification?
A. Nothing at all.

CHARLES CLARK (re-called.)

To His Honor JUDGE MORGAN :

Q. You haven't any idea how it is possible that that parcel could have escaped your attention when calling out the names? A. It is possible but not at all probable.

Q. The man in throwing it down may have omitted to call out the name or you may have not heard it? A. As I told you I examined the contents of each but I may have omitted one.

Q. At any rate it was not wilfully destroyed by you? A. Most certainly not.

ARTHUR S. HARDY, sworn :—Examined by Mr. WATSON.

Q. Mr. Hardy in April of last year you were the Premier and Attorney General of the Province? A. Yes.

Q. And you were of course very well aware of the statutory provision which made it compulsory on the Clerk of the Crown in Chancery to destroy ballots after they had been in his possession one year after the return had been made? A. Yes.

Q. And I suppose in your position too, you were aware that that was complied with to some extent, although it is a statutory obligation of the Clerk of the Crown in Chancery? A. I never was aware of the time or occasion when it occurred, it was not a matter to which any member of the Government gave as far as I know any attention. It was left wholly to the Clerk of the Crown in Chancery.

Q. By reason of the Act? A. Exactly.

To His Honor Judge MORGAN :

Q. And they could not interfere if they wished? A. No.

To Mr. WATSON :

Q. As Premier and Attorney General had you personal knowledge of where he kept these ballot returns? A. No, and I do not know now, except they say in one of the vaults, but I never saw the vault.

Q. Had you any knowledge at or prior to the time when these election returns were destroyed last election—that is in April? A. No, if they were destroyed at the time of the burning, on the 12th or 13th April, I was absent from Toronto. Mrs. Hardy and I were stopping at the Rossin House, and immediately after the session had closed, about the 2nd or 3rd April, I was unwell and left on Monday the 10th and proceeded to Danville Sanitarium where I remained till about the 7th May. A few days after I returned I received a letter from Colonel Clark stating that in destroying the ballots he thought the West Elgin bye-election ballots had also been destroyed.

Q. Colonel Clark has identified this as a copy of the letter to you from him. Kindly look at it and see if you recollect it? (Exhibit 4.) A. That appears to be the letter in substance. I would not like to say from memory it is verbatim.

Q. I see this is marked as a personal letter. The original you may have mislaid? A. It was a personal letter and would not necessarily go on the file, but I can look.

Q. We have ascertained from Colonel Clark that you replied to that the day you received his communication. Your communication is marked as confidential, but I expect you have no objection to it being used? A. No, none at all. This is the letter I sent him. (Exhibit 5.)

Q. I observe in this you express amazement and chagrin at the occurrence? A. Yes, I thought it a very unfortunate occurrence in view of what had been stated in the papers.

Q. Prior to this I understand from what you have said you had no knowledge of the occurrence? A. None, whatever.

Q. Colonel Clark has said that is the only correspondence between you and him? A. Yes.

Q. Following upon that did you give any directions in your capacity as Premier or Attorney General? A. When Colonel Clark came down a few days later he came in to see me. He could say very little more than his letter contained. I told him I was of the opinion the matter had better be referred to the Deputy Attorney General for investigation. He agreed in that view, and Mr. Cartwright was sent for and directed to make an investigation of all the facts and circumstances. He did so and reported to me a few days afterwards, that he could arrive at no other conclusion from the evidence he took than that the occurrence was accidental.

Q. Was that a verbal report to you? A. Yes. He did not make a report in writing. I had in the meantime reported the occurrence to my colleagues in Council at the first meeting.

Q. Following upon that, the investigation having been made, and the report, was there anything else apparently to be done. A. Nothing in so far as I could see. The evidence was all one way. Those who had been concerned in the matter were examined, and there appeared to be nothing that led to the belief there was any foul play in the matter. A great number of boxes were being destroyed, and this might easily have gone with the others, especially as there were several engaged in the work. That seemed to me to be the only view to take of it in view of the evidence. The men concerned in moving were Colonel Clark, Mr. O'Brien, Robertson and Halley, and I think some others were assisting. All of them were men of the utmost probity and standing. Colonel Clark had mentioned that Robertson was in the safe handing them out. He was a man who had been with us since we came here, and I think down in the other House, and was one of the most excellent messengers we ever had. He was not a man who took any part in politics or could have any motive. Mr. O'Brien is a man I would trust with anything, and no one could have suspected Colonel Clark.

Q. Was there anything that occurred at all in connection with the matter, or in connection with the acts of the parties to cause suspicion of wrong doing? A. Nothing whatever that I ever saw or heard.

Q. As a result, I understand in the exercise of your functions you conclude it was an accidental destruction? A. I certainly came to that conclusion.

Q. Have you at any time since, had any reason to change that view? A. None, whatever. If I had there was no evidence to sustain it in any form, but then I have not.

Q. And as to the facts and occurrences, as you have said you had no personal knowledge? A. None whatever.

OWEN MOONEY, sworn. Examined by Mr. WHEATON.

Q. You were in service here in April of last year? A. Yes.

Q. How long had you been employed here? A. All last session.

Q. When did you come? A. I came the day before the House opened.

Q. How long did you remain? A. Until after the session closed several weeks.

Q. What were you doing during the weeks following the close of the session? A. Cleaning up all round, etc.

Q. Were you employed here on any former occasion? A. Yes, sir.

Q. How long? A. I think two years before.

Q. Do you live here? A. No, sir.

Q. Where is your home? A. In London.

Q. Then after you ceased your service here you returned to London? A. Yes, sir.

Q. Are you engaged again during this coming session? A. Yes, sir.

Q. You are a man I should say about 45 years of age? A. 46.

Q. Do you recollect the occasion when the ballots were destroyed under the direction of Colonel Clark last year? A. Yes, sir.

Q. Who spoke to you about it first? A. Mr. O'Brien.

Q. What did he say to you? A. I was to help; he was getting the help down to get the parcels and boxes out.

Q. Did you know before where they were? A. No, sir.

Q. Had you ever been in the vault before? A. No, sir.

Q. Had you any knowledge of what was in there? A. No, sir.

Q. With whom did you go to the vault first? A. Mr. O'Brien and Halley; we were there and then Colonel Clark came down.

Q. What occurred first? A. I think Robertson opened the outer door, and Colonel Clark opened the door of the vault I think—I know he was there.

Q. Did you go into the vault at that time? A. Yes.

Q. With whom? A. Mr. Halley and Robertson and the Colonel.

Q. What took place in there on the first occasion? A. He was lying out and telling us what to get out.

Q. Who was? A. Colonel Clark

Q. Can you recollect now what he said? A. Only about the parcels and boxes—we got out a certain portion and then I started trucking.

Q. Who got out a certain part? A. The three of us.

Q. Were you in the vault? A. Yes, for maybe ten minutes.

Q. Who else was in there at that time? A. Halley and Robertson.

Q. What were you doing in there? A. Lifting out the bags and parcels and placing them outside the door.

Q. How many did you lift out there? A. Probably six or seven—then I started trucking.

Q. Who helped you at the trucking? A. Halley helped me, and after awhile he got another truck.

Q. What was he doing? A. He was helping me load on the truck.

Q. Did you go into the vault again? A. No sir.

Q. Where was your truck, was it outside the outside door or inside the door? A. It was outside altogether.

Q. The boxes were taken to the outer compartment? A. Just outside the door.

Q. There is an inner compartment where the vault is and an outer compartment? A. Yes.

Q. Did you get the boxes from the inner compartment, from the outer compartment or outside of both? A. Outside, and there was one box we got between the two doors.

Q. Did Halley go into the vault after that? A. I think he did.

Q. What was he doing in there? A. He was helping Robertson to keep me going.

Q. And in there what were they doing? A. They were lifting the boxes out.

Q. Were the boxes large or small? A. Some of them a good size.

Q. Were there any of them one man could not easily lift? A. Yes sir.

Q. Was there anything on the boxes to identify them, to show where they came from? A. Some were marked, I didn't take any notice—I just took what was given to me.

Q. Some of them were marked? A. Yes, some had labels.

Q. How did the work proceed, slow or fast? A. Medium sir.

Q. Was there anyone else there except Robertson and Halley and yourself? A. Mr. O'Brien was back and forward.

Q. No one else? A. No sir—the Colonel stopped at the fire hole.

Q. There was no one else taking boxes away from there or getting in there? A. No sir.

Q. Are you sure? A. Certain,—all the boxes that left there went to the fire hole as far as I know.

Q. Was there anyone about the place, in the passages interfering with you or talking to you. A. No sir.

Q. Did anyone speak to you? A. No, sir; there was no one down there.

Q. Didn't anyone ask you for any information about the boxes? A. No, sir.

Q. Did anyone get any boxes from you? A. No, sir.

Q. What did you do with the boxes? A. Brought them to the fire hole. There was a bit of a banister and we lifted them over and tumbled them down, and there were men below.

Q. They went down to the furnace room floor? A. Yes.

Q. Did you have anything more to do with them after that? A. I helped gather up the scraps and put them in the fire after the trucking was all over.

Q. Can you speak now of any boxes you saw that you could identify? A. No, sir.

Q. Did you see any box that you knew as the West Elgin bye-election box? A. No, sir.

Q. Did you hear anything said about it? A. No, sir.

Q. Have you any knowledge of any such box being there and being carried by you? A. No, sir; I did not know anything about the boxes.

Q. Can you say whether or not you did carry such a box? A. I might have, sir.

To His Honor Judge MORGAN :

Q. But you didn't know anything about it? A. Nothing more than that, sir.

To Mr. WATSON :

Q. You were in there ten or fifteen minutes the morning you started. Did you go into the vault again to see how the work was getting on? A. I went in; I think I took out from the inner vault two boxes; I think they were rather heavy, and I went in to the inner door.

To His Honor Judge MORGAN :

Q. Could you get the truck into the vault, into the vault door? A. Just about, sir.

To Mr. WATSON :

Q. You say you went into the vault and got out two boxes? A. Yes, sir.

Q. Was that in the forenoon or afternoon? A. The afternoon, I think.

Q. Of that first day? A. Yes, sir.

Q. Who was with you when you were doing that? A. I think there was only Robertson inside.

Q. Who put those boxes on the truck? A. Robertson was on the end, like; some of them were all to pieces, and that was the reason I went to put these on the truck.

Q. Have you any idea what it was you put on at that time or where they came from? A. No, sir; only that they came out of the vault.

To His Honor Judge MORGAN:

Q. Did you say some of them were falling to pieces? A. Some of the parcels were, and some of the boxes weren't sound.

To Mr. WATSON:

Q. Have you any recollection as to those two or three boxes you speak of that you yourself got out there, whether they were sound or not? A. I think one of them was kind of broken.

To His Honor Judge MORGAN:

Q. Who lifted that on to the truck? A. I did.

Q. Did Robertson help you? A. He was there; I did nothing but with what was laid in front of me.

To Mr. WATSON:

Q. How near to the door were these two or three boxes? A. Probably a couple of feet inside.

Q. Can you say where these two boxes were? Were they to the right or left of the door? A. Just about in front of the door.

Q. Had you any knowledge yourself of any distinction between the bye-election boxes and the others? A. No, sir, I didn't know anything about them.

Q. When did you first hear or find out that this one box had been carried off or taken away? A. I heard something about a box going astray the next day or that evening probably when they were stock-taking.

Q. When you heard about it were you able to say whether or not it had been carried off? A. No, sir. As soon as I done the work I went off to my other duties.

Q. Do you know anything more about it than that? A. No, sir, nothing more.

To His Honor Judge MORGAN:

Q. Did you throw any of the boxes off the trucks down in the furnace room yourself? A. I did some of the lighter ones, and another one someone helped me over with. It was checked at that time, marked off, if correct.

Q. Who did the checking? A. The Colonel as far as I know.

Q. Did you know how it was done? A. I didn't take any notice.

Q. Was he up at the top of the platform? A. Yes, now and again. Sometimes Mr. O'Brien would go right over and sing out.

Q. Was it Mr. O'Brien who called out the boxes? A. Sometimes, yes.

Q. And when he didn't who would? A. The Colonel would come up himself and look at them.

Q. When you understood they were checked off you threw them over? A. Yes.

Q. Did you throw over any that were not checked off? A. I might have done so, sir.

Q. How many would you bring on a truck at a time? A. Sometimes one, sometimes a couple of small ones and maybe a paper parcel.

Q. When you brought the truck to the edge of the furnace pit what would you do then? A. Put them over then.

Q. Would anyone look at them? A. The Colonel would probably be there.

Q. We don't want probabilities? A. The Colonel.

Q. Sometimes? A. Yes.

Q. And when he didn't do it, who did? A. Mr. O'Brien.

Q. Are you able to say they inspected every box brought there? A. I couldn't say.

Q. At any rate when you threw them over you thought they were inspected all right? A. Yes, sir.

Q. Still you say you may have burned a box that was not checked? A. Yes, sir.

Q. But you didn't know that you did? A. No, sir.

Q. Did Colonel Clark make any entry in a book of these packages as they were brought? A. He had books there.

Q. When the boxes were dropped down into the furnace room what would happen then? A. The boxes would be broken. The men would break the boxes in the fire hole.

Q. Did any of them break in the fall? A. Some of them burst right open, others didn't.

Q. Did you see any other kind of parcels besides boxes and paper parcels? A. No, sir.

Q. Someone said there were bags? A. There was a bag or two.

Q. When you threw the bags over what happened to them? A. I never stopped to see.

Q. You never noticed any of the labels on them? A. No, sir.

MAURICE HALLEY (recalled). Examined by Mr. WATSON :—

Q. The last witness says that after the morning, after the first occasion, that he did go into the vault and got two or three boxes from there—I understood you to say yesterday that you were not in the vault after that first time of going—were you in the vault after that? A. I have been thinking and it is likely I did go in—if we were waiting for boxes to come out, it was likely I would go in but I have no distinct recollection.

Q. Why do you say very likely you did? A. If there was work to be done there—waiting with trucks it is likely I would go in, in order to facilitate the work.

Q. Have you no personal recollection of having gone in there? A. No, sir.

Q. Mooney says he went in there; do you recollect seeing him going in? A. I may have been away with a load.

Q. You went off with a truck sometimes and left him behind with a truck; is that what you say? A. Yes, one would get his load and go, and then the other would load up.

To His Honor Judge MORGAN :

Q. When did you get the second truck on? A. I think it was soon after we commenced.

Q. Before or after dinner? A. The work was all done after dinner both days.

Q. You commenced after dinner? A. Yes.

To Mr. WATSON :

Q. What time did you stop work? A. About 4 o'clock.

Q. You had'n't very much time then? A. About two or three hours each day; the first day the furnace got choked with paper and we couldn't proceed until next day.

Q. Then if you did it in two or three hours how did you work? A. We worked pretty diligent, I think, kept going.

To His Honor Judge MORGAN :

Q. You threw over the boxes and packages you brought on your truck? A. I think I threw them down myself. After we got quite a quantity of stuff I stood and threw it over where Mooney was trucking.

Q. They wouldn't throw over direct from the truck to the furnace room? A. They would throw straight from the truck over the banister into the floor of the fire room.

Q. Then there couldn't be much occasion for you to stay behind and throw over? A. I think there was sometimes.

Q. Do you know who looked them over to see if they were all right? A. Those I threw over, I called the names to Colonel Clark.

Q. Do you know if the Colonel looked at any himself upstairs? A. Yes, he came up occasionally.

Q. Have you any knowledge of throwing over a parcel you didn't call out to him? A. No, sir, I have no recollection.

Q. It is possible you could have done so? A. I don't think so.

Q. You think every one you threw down, you called out to him the place it came from? A. Yes, sir.

RICHARD GRIFFITH, sworn. Examined by Mr. WATSON :

Q. Are you in employment here? A. Yes.

Q. How long have you been so? A. I came up here from the old buildings.

Q. How long were you down there? A. About three months.

Q. What are your duties? A. Fireman.

Q. Anything else but that? A. During session and after cold weather starts I am with the second engineer helping him.

Q. If the session is not winter time, are you firing or with the engineer? A. With the engineer.

Q. Do you recollect in April last, when these returns and ballots were being burned by Colonel Clark. A. Yes.

Q. What do you know about it? A. All the ballots that came down were put in the fire and burned, that is about all.

Q. Do you know anything about what was done up stairs outside the furnace floor? A. No, sir.

Q. No knowledge at all? A. Only that the men trucked the boxes to the head of the stairs.

Q. Were you in the vault at all? A. No, sir.

Q. Know anything about the vault? A. No, sir.

Q. Don't know what was in it? A. I have heard.

Q. Did you see in the vault that day? A. No, sir.

Q. Who were down stairs on the furnace floor with you? A. Colonel Clark, Burns and myself. There was another fireman named John Bennett.

Q. What was done there as you saw it? A. The ballots were taken out of the boxes, put in the fire and burned.

Q. Who did that? A. Burns, myself and Bennett.

Q. Who gave you your orders? A. Colonel Clark.

Q. What instructions did he give you? A. To put them in and burn them up.

Q. What did you put in the furnaces? A. All that came out of the boxes and parcels.

Q. What proportion were boxes and parcels? A. I couldn't say at all.

Q. Did you see anything else? A. Two or three bags.

Q. What did you do with them? A. Emptied them out and threw the contents into the furnaces.

Q. It has been stated that they were thrown over from the floor above. What effect did that have? A. It split most of the boxes open.

Q. What did Colonel Clark do, to your knowledge, after the boxes were thrown over? A. I couldn't say.

Q. Did you see him do anything, or hear him say anything? A. Not that I know of.

Q. Do you know what he was doing? A. Unless he was checking them off.

Q. Did you see him do that? A. I couldn't say.

Q. Did you see him with any book or memorandum? A. He had a book and pencil.

Q. Did you hear anyone call off, say, Bruce or Wentworth, for instance? A. I never took any notice—we were doing our own work.

Q. Did you look to see where there were any names on the packages? A. No, sir.

Q. Was the work slow or fast? A. We found it fast enough.

Q. Were you asked to go slower or faster? A. We could use just so much in the furnace.

Q. Was there any rush, anyone rushing you? A. The sooner we got them burned, the sooner our work was done, that was the idea.

Q. Who put them over? A. I could not say.

Q. Whom did you see there? Did you see the men upstairs? A. Occasionally.

Q. Whom did you see? A. I wouldn't swear to anyone.

Q. You know Mr. O'Brien? A. I seen him there.

Q. What was he doing? A. I couldn't tell you.

Q. Did you see Halley and Mooney? A. Yes, with the trucks.

Q. Could you tell whether a box containing West Elgin ballots, East Elgin ballots or others were burnt? A. I could not.

Q. What was done with the boxes themselves? A. What was left of them was given to the fireman for fire-wood. They were pretty well split up.

Q. Was there more burnt the first day or the second day? A. I think rather more burnt the first day. The furnaces were clear with a fresh fire.

Q. Have you any knowledge then of those West Elgin bye-election ballots being burnt or being there? A. None at all. What came down was burnt, that is all.

THOMAS BURNS, sworn. Examined by Mr. WATSON:

Q. How long have you been in employment here? A. Since 1892.

Q. You were in the old building too? A. No, sir. I came here first.

Q. What are your duties? A. Assistant engineer.

Q. Do you recollect the occasion of the burning of the ballots in April of last year? A. Yes, sir.

Q. Do you recollect any former occasion when they were burnt? A. I remember once before.

Q. What was the first you heard about the intention to burn them in April? A. I think the day before we burnt them, Mr. O'Brien came down and enquired what shape the furnaces were in, and if they could be used to burn ballots.

Q. What report did you make to him? A. I said they were all right.

Q. What was the next thing that occurred? A. The next afternoon I was up through the building and I came down and they were there with some boxes.

Q. Who were there? A. Colonel Clark, Mr. O'Brien and the men in the fire hole, Griffith and Bennett.

Q. Was Bennett there on the first day? A. Yes.

Q. What did you hear stated? What was said? A. I don't remember anything.

Q. What was the first thing done that afternoon? A. The fires were started when I came there. I couldn't say how they proceeded at the start.

Q. Did anyone give you instructions? A. No, sir. I just went to work.

Q. What did you do? A. I threw some papers into the furnaces and when they got pretty well filled up, I stirred the papers with the poker.

Q. How did you get the papers in the furnace? A. With our hands. Just as we could get hold of them.

Q. In what shape did they come down to the floor? A. Some in boxes, some in paper parcels, and some in bags.

Q. Those in boxes were in what condition? A. When they struck the floor the boxes burst generally.

Q. What is the fall? A. I think 8 or 9 feet over the railing. The object was to burst the boxes and save breaking them with the axe.

Q. Who took them out of the boxes, the three of you? A. Yes.

Q. What was Colonel Clark doing? A. He was checking.

Q. How do you know that? A. He had a pencil and book, and I saw him using the pencil on the book.

Q. Did you see him doing anything else? A. I heard him asking what this or that parcel or box was, where it was from.

Q. Who answered him? A. Mr. O'Brien sometimes; I think he was the only one. I could'n't say there was anyone else.

Q. Did you ever see more than one box come over at a time? A. No.

Q. Or more than one parcel? A. No sir.

Q. Can you say whether or not they did? A. I could'n't.

Q. Was there an accumulation of boxes below? A. Yes.

Q. How many at a time? A. I couldn't say.

Q. Was this done with good system or was there more or less confusion? A. There wasn't any confusion; we did it quicker than on the previous occasion.

Q. Were you working fast or slowly? A. I did the hardest afternoons work I did for some time.

Q. How were the other men working? A. They were all working good.

Q. Was there any marks on the parcels or bags and boxes that you saw, printing or writing? A. Some were labelled and some were printed.

Q. Did they all have either labels or printing? A. I couldn't say.

Q. How do you know they had labels on them? A. I saw the labels.

Q. Tell me one label you saw? A. I couldn't do that.

Q. Why not? A. I saw a red label on one box.

Q. What was on it? A. I couldn't tell you.

Q. You said some had printing? A. What I would call printing—large letters.

Q. Give me any letters? A. "L" is the only letter I remember.

Q. How did you happen to notice that? A. The peculiar shape of it.

Q. Did you see any box or parcel or bag marked "West Elgin"? A. No, sir. Not that I know of.

Q. Had you any knowledge or information that first day of the burning of a box containing West Elgin Bye-Election Returns? A. No, sir.

Q. Did you hear of any such thing? A. No, sir.

Q. Do you know whether it was burnt or not? A. I do not.

Q. Could you identify any one package that was burnt? A. No, sir.

Q. Did you see the other men working up stairs? A. I saw Halley and Mooney.

Q. What were they doing? A. Trucking boxes.

Q. Were they throwing boxes down? A. I think so.

Q. What makes you think so? A. I don't distinctly remember that they did.

Q. Can you say you saw either of them doing it? A. No, I can't.

Q. Were you in the vault? A. No, sir.

Q. Do you know anything about the vault? A. I know where it is.

Q. Did you see inside of it that day at all? A. No, sir.

Q. Know what was in it? A. No.

Q. Have you any idea or information of what became of that box containing West Elgin Bye-Election returns? A. No, sir.

(Adjourned until 12th instant.)

PARLIAMENT BUILDINGS, TORONTO.

Monday, the 12th February, 1900.

Mr. McPHERSON: So as to not interrupt later I beg permission—I have been instructed by Mr. Findlay G. McDiarmid, the defeated candidate at the elections which your Honors are investigating, to appear before you and ask to have him represented by Counsel here and at St. Thomas.

His Honor the CHAIRMAN: Is that on account of his likely being brought into the matter himself?

Mr. McPHERSON: No, it is only because he thinks he may have information of use to you.

His Honor the CHAIRMAN: Any information he may have will have to be conveyed to the Crown Counsel, and it will have to come through him.

Mr. McPHERSON : With great deference, your Honor, I have been instructed that considerable confidential information has been brought to his attention about which it would be necessary for him to consult Counsel, and I am instructed to say, he would be loath to have to confer with a political opponent, even in his capacity as Counsel.

His Honor the CHAIRMAN : We don't know anything about political opponents—we don't recognize parties—we don't know who Mr. McDiarmid is any more than anyone else. If we did, there might as well be an end to the Commission ; if we were to take that course on behalf of Mr. McDiarmid, then anyone might come in.

Mr. McPHERSON : I submit not, your Honors—you might limit the case to Mr. McDiarmid—I submit it as a matter which might be fairly taken into consideration by the Commissioners. It is of enormous public importance.

His Honor the CHAIRMAN : But not any more so to him than to anyone else ; we don't wish to have anything in the shape of partyism.

Mr. McPHERSON : I will put a purely suppositious case, for the sake of argument : Supposing a witness to be called before you Honors requires to be cross-examined on some particular matters, with a great deal of care, and absolutely no previous knowledge of the line of cross-examination, otherwise he might come into the witness box prepared with a story hard to break down, but if he come entirely unprepared it would be very easy in some cases to disconcert, so that his evidence would be very much weakened. Assume that the witness had no information before he gets into the witness box ; the whole effect of the cross examination would be lost. This is purely a suppositious case, shewing how difficult it would be to ask those who have political knowledge to lay that into the hands of those representing the Crown.

His Honor the CHAIRMAN : Mr. Watson, as you say, represents the Crown, but does not represent the Government or any party ; if he did, I do not think any one of the Commissioners would be willing to act on the Commission.

Mr. McPHERSON : I take the ground that the Government is on its trial in this enquiry ; that the public so regard it.

His Honor the CHAIRMAN : I cannot help what the public regards. We are called to enquire into the conduct of the Returning Officers and deputies in West Elgin. If anything comes out reflecting on any individual, we will report it and let the chips fall where they may.

Mr. McPHERSON : That would be almost impossible with the documentary evidence not forthcoming. The position is of great gravity in reference to the ballots, and public comments on the street shew that the people think so.

His Honor the CHAIRMAN : I think at least the papers should be fair. They should not distort the evidence. Already statements are given as to the evidence which are not fair. Words are put into the witnesses' mouths which they did not utter at all. It is very unfair to the witnesses and to us Commissioners, and is perhaps preparing the public mind for a certain result which may not happen. At our first meeting, before we knew anything as to what was going to transpire, we came to the conclusion it would be impossible to allow everyone who chooses to have Counsel in the character of prosecuting Counsel. If we allow one we must allow another, and the proceedings would be interminable. I cannot understand why any gentleman wishing to have the truth come out cannot give the facts to Mr. Watson. The moment any person's character, reputation or acts are in any way reflected upon, then he is entitled to be represented by Counsel.

His Honor Judge MORGAN : Quite so ; there is no doubt about that.

His Honor the CHAIRMAN : This proposition of yours now is against the rules laid down at the outset of the proceedings. You are asking us to undo what we have already done.

Mr. McPHERSON : Rather to supplement.

His Honor the CHAIRMAN : You make the point that Mr. McDiarmid, being a candidate, has a different position from others ?

Mr. McPHERSON : Has a distinct status. At what is known as the August Session in 1896 a question had previously come up as to the right of constables to vote at elections at the August Session. This was referred to the Court of Appeal with the direction for Counsel to be to be heard on each side. This is sufficiently analagous to urge that Mr. McDiarmid would represent practically the opposite interests to those officials whose conduct your Honors are to investigate, who perhaps in some instances were named by McDiarmid's political opponents.

His Honor the CHAIRMAN : While we would be very glad to meet your wishes, any voter has clearly as much right as Mr. McDiarmid.

His Honor Judge MORGAN : I suppose Mr. McDiarmid might say and urge with some force " I was the defeated candidate. I claim I was defeated on account of improper practices. In that sense I have a personal interest in this matter, so I desire to aid the Crown exactly as is sometimes permitted in criminal matters—that a private prosecutor be allowed to assist the Crown and yet be represented by Counsel himself."

There is also equal force in this. We must be careful not to open the door too wide. Any voter who may have reason to complain, and I understand through the press that certain voters have complained that their ballots were improperly handled, so that they were denied rights as electors, then any individual voter would have not so weighty a right, perhaps, but exactly

analogous to that of Mr. McDiarmid—not quite so much, perhaps, but he might say “I should be represented by Counsel, as I have a right to attack the deputy in my sub-division.” At that rate we might have quite a crowd of Counsel.

I see the difficulty suggested ; of course, it is no difficulty at all if one says : “ Here is the Crown honestly endeavoring to reach the truth, appointing an officer who equally desires with us to reach the truth.” All that is necessary then is that the material by which the truth may be reached be brought to the notice of the Crown Officer exactly as in criminal matters ; then the Crown Officer presents it in such form as best secures the interests of justice.

Of course if it is suggested that this matter may be managed in a partisan manner, and Mr. Watson would not accept suggestions—if that was the fact it would be absolutely necessary for other Counsel, but until that is made apparent I do not see how we can vary the Rule.

Speaking for myself, if, during the progress of this Commission any matters are presented to Mr. Watson's notice, which in my opinion—(I am always open of course to be influenced, in fact I desire to act in accord with the views of my brethren on the Commission as much as possible,)—but speaking now for myself, if anything is brought to Mr. Watson's notice, which it occurs to me is material if I should have occasion to perceive—(which I have not the slightest idea I ever will have)—Mr. Watson declining to make use of reasonable information bearing properly on matters within the scope of our Commission, then I should at once say : “ Mr. Watson, if you do not choose to bring out what seems to be proper evidence, I will have to say that as far as that particular evidence is concerned, we will have to allow the parties to present it themselves.

We have intimated to the public that if any one has any charge to make against any individual within the scope of the Commission, and chooses to give the Crown Counsel the information, and to indicate that certain persons will be able to give material evidence the matter will be attended to ; and I have not the slightest doubt but that the fullest effect will be given to it. These people summoned as witnesses will have to be summoned in the ordinary way, and if there is any desire on Mr. Watson's part to represent a political party the same thing might take place in any event.

MR. WATSON : I am very pleased indeed that Mr. McPherson has appeared before you to-day and made the observations he has, but I regret exceedingly that he should have felt any occasion for it, because I take it that occasion indicates either want of confidence in this Royal Commission or want of confidence in the Crown Officer who has been delegated to the highest functions that could be reposed in Counsel ; to assist the Commissioners in the performance of their duty. If I had not felt I could accept the responsibility of acting for the Crown, and through the Crown for the people, irrespective of party, liberal or conservative, I should not be here to-day ; and I am very glad that my learned friend has been kind enough and fair enough to say so of me. The moment I feel I am in the position that my learned friend fears I may be placed in, my learned friend will not find me before this Commission. The moment I feel that I have the slightest embarrassment in performing my whole duty, that moment I shall retire, and not allow myself to be placed in a false position.

I understand, as you Mr. Chairman has put it, that this is a Royal Commission with functions of the highest character upon the Commissioners, the performance of the duties not depending on counsel alone, but to be assisted only by counsel, and that the performance of those duties carries with it investigation on the part of the Commissioners as well. My learned friend, I think, was not aware of the rule passed ; otherwise he would not have felt the apprehension as to the absence of information, and would have known that provision was already made for obtaining information from every source. I refer to the rule passed on the first day of the meeting, which reads : (Reads Rule 6). That is a rule which provides for the fullest investigation ; which calls upon every member of the public to furnish every information he may know of to the Crown counsel.

I am very sure, knowing my learned friend as well as I do, that any information given to me from any source, Mr. McDiarmid, or any one else, will not fail to reach the proper channel, the Commissioners, and to be laid before them with as much detail as is practicable for me.

HIS HONOR JUDGE McTAVISH : Mr. Chairman, I agree with what has been said by yourself and Judge Morgan ; I think we must adhere to the rules already formulated, to expedite the enquiry, while I would give them a very liberal interpretation, and if, not looking so much to the letter of the rule as the spirit, we can meet the views of any one before the Commission, I would be very glad ; but it occurs to me that no occasion has yet arisen for departure from the rules. I think we may make supplemental rules if the occasion requires, but until it is apparent to us—and we will not I am sure require very strong evidence—if it is apparent to us in any possible way that the enquiry is not being probed to the bottom, we would simply report the matter to the Crown, in order that we might have further assistance in the conduct of the investigation ; but until the occasion arises I think we must adhere to the rules already made.

It does seem to me that Mr. McPherson and Mr. Watson might get together and set a great many of these suggestions that Mr. McPherson has made. I can not see that Counsel would be embarrassed in submitting a charge, and in general terms the evidence in support of it, and let the enquiry proceed in that way. I am not impressed that that cannot be done ; I

think it might. However, I agree with my brother Commissioners that in the meantime we must adhere to the rules.

His Honor the CHAIRMAN : We are very anxious to avoid noticing any one person more than another. We know no one, and the instant we depart from the rules for a candidate, then any other elector has equally as much right. As you see, we are anxious to meet your views, and I think if you will furnish all the information and the evidence, there will be plenty present to see whether or not the Crown Counsel makes the most of that evidence, and the instant they see he does not do so—(though such a suggestion cannot be made for a moment)—and the information conveyed to us Commissioners that justice is not being done, we will then step in and see what can be done to change the condition of things.

His Honor Judge MORGAN :—I see one other difficulty, to judge of this question, which is rather a nice question, we must look at the thing from its foundation up. Here was an election in which one gentleman was elected and another defeated ; immediately after the elections certain allegations are made from some source, certainly not from the source of the man elected, because he would not throw dirt on the process by which he became elected ; consequently it must come from the other side. The press takes up the question from various standpoints ; so the thing goes on until the Government representing the people of Ontario, or the Government which ought to represent the people of Ontario, and as we have no doubt it does, says : “ this thing has become a sort of scandal through the press ; the truth must be got at ; it cannot be dealt with exactly as in Election Courts ; therefore we propose to have it investigated by a Commission ; we appoint a Commission.” This is not in the nature of a prosecution ; it is an enquiry ; there is no prosecutor exactly, no prisoner and no person defending the prisoner. We are put in the position of an enquiry, and the Government representing all the people says : “ we will appoint some one to take the trouble—you gentlemen as Commissioners cannot go around hunting up evidence—we will employ some one to assist you,” and they do so. It is true the Government has thought proper to employ a gentleman whose political leanings have been of the same character as the political leanings of the Government, but they had to make a choice from one political side or the other, and I suppose fault would have been found in any case.

It is now asked on behalf of the gentleman from whose supporters came the original complaint in regard to this election, permission to be represented by counsel. If we permit that gentleman to appear by counsel, as complaining that he was injuriously effected by these men, surely then we must permit the candidate, who was elected, to appear also by counsel to represent and practically defend the people who are charged. It may be that that will be answered by allowing each individual to be represented ; but he says “ I want to go beyond that, I want to defend the general principle that there was no impropriety at all ; these individuals may have done little wrong-doings, but there is not the general commission of what has been charged in this election, and I want to be represented, too.” And if we grant it to one we cannot refuse it to another. It is possible a time may come when perhaps Mr. Watson himself may say “ there are certain things I would prefer a counsel acting for Mr. McDiarmid to take charge of.” In that view we should not have the slightest objection.

Mr. WATSON : The moment I feel any embarrassment I will say so or retire.

Mr. McPHERSON ; On account of his having had confidential communications made to him, about which he and others would have to confer with counsel in order to properly lay it before the Commission—that brings it to this, that there would be a very considerable amount of lack of coming forward, so to speak ; people would be backward in coming to confer with Mr. Watson.

His Honor the CHAIRMAN : Let them confer with you and you confer with Mr. Watson.

Mr. McPHERSON : That is probably the only other alternative left.

His Honor Judge MORGAN : There is nothing to prevent Mr. McPherson assisting the Crown Counsel in every way, in bringing to his notice matters of importance to be known. If Mr. Watson exhibited any reluctance to receive any suggestions, or to blink his duty in any possible way, this Commission would never tolerate it, but of course I have not the slightest idea Mr. Watson would do so. There is something in what you say about these people being a little chary of coming to Mr. Watson ; they may say that after he gets through with the Commission he is a political again.

Mr. McPHERSON : I shall report to Mr. McDiarmid fully what your Honors have said. I am instructed that as far as we know the terms of your commission have not yet been announced to the public. It is quite true that an invitation has been extended through the press to parties with information to come and confer with the Crown Counsel.

His Honor the CHAIRMAN : I thought we had made that plain here, because the reporters were here when I drew Mr. Watson's attention to the fact that the Commission was to enquire into the conduct of the returning officer, deputies and poll clerks.

His Honor Judge MORGAN : In fact, up to the time of the transmission of the ballots here.

His Honor the CHAIRMAN : I understand from the Crown Counsel there was no intention to narrow the Commission but to have it as wide as possible, and he took the responsibility of asking us to enquire into the destruction of the ballots.

Mr. McPHERSON :—The evidence I understand it would be desirable to lay before your Honors has a bearing on the destruction of the ballots.

His Honor the CHAIRMAN :—Then we will hear it.

His Honor Judge McTAVISH :—We intend to close up one branch of the case to-day, but if anything arises you will not be shut out.

Mr. McPHERSON :—My client lives a long way from Toronto, and it takes time to communicate with him. I understand your Honors go to St. Thomas on the 22nd, and I would suggest that perhaps if your Honors could avoid closing on any branch here, to give me an opportunity of conferring with my client.

His Honor the CHAIRMAN :—We do not intend to close this branch with the view to shut out any other evidence. We are examining two witnesses to-day which will close all the witnesses we have heard of in connection with the destruction of the ballots. You, of course, know that if we were to be asked to come back to listen to a dozen different counsel representing the prosecution, the proceedings would be interminable.

Mr. McPHERSON :—Your Honors are anticipating any other requests to come before you, I would have asked that the applications of counsel to be heard be dealt with in the order in which they come.

His Honor Judge MORGAN :—If we grant one we would have to grant any others.

Mr. McPHERSON :—Supposing I would limit my application of being represented until your Honors were embarrassed with too many applications?

His Honor the CHAIRMAN :—We want to disregard the political complexion of any party. Mr. Macnish has as much right to say he wants to uphold the purity of the election as any one else. There may be a dozen others with information who might ask to be represented.

Mr. McPHERSON :—The Government might see its way to enlarging the scope of the Commission.

His Honor the CHAIRMAN :—I think any one giving information to Mr. Watson, and sitting there in the Court Room, would know it was properly dealt with.

Mr. McPHERSON :—That would be a very unpleasant position for me for instance.

His Honor Judge MORGAN :—I see no reason at present to concede; it may be on reflection we may perhaps be able to do even more than I have suggested to you.

Mr. McPHERSON :—My suggestion that the commission be published will be acted upon?

His Honor Judge MORGAN : We might send you a copy of the Commission.

Mr. McPHERSON :—With leave to publish it?

His Honor the CHAIRMAN :—I don't think there would be any objection, but the papers wouldn't print it for nothing.

Mr. WATSON :—Personally I shall be most delighted to have my learned friend's company, and avail myself of every particle of information he can give.

JOHN R. CARTWRIGHT, sworn. Examined by Mr. WATSON :

Mr. Cartwright, you are the Deputy Attorney-General? A. Yes.

Q. For what length of time have you been such? A. Nearly eleven years.

Q. In the course of the performance of your duties is it customary for you to be called upon or referred to in regard to the destruction of the ballots annually in accordance with the Statute? A. No, it is not.

Q. Do you recollect a reference being made to you in connection with the destruction of the ballots in April or May? A. Yes.

Q. Can you tell what date it was? A. I don't remember the date, but it would be shown just as well by the notes of the evidence I took down. It was shortly before that?

Q. From whom did you receive your instructions in that direction? A. From the Attorney-General, Mr. Hardy.

Q. What were the instructions you received? A. To probe the question of the loss to the best of my power, and find out if I possibly could how they had been destroyed.

Q. And in pursuance of these instructions, what did you do? A. I enquired about the parties who had any knowledge; I then went down and examined the location where the ballots were kept, and saw the furnace where they were destroyed.

Q. Did you make a personal inspection? A. I did. I then examined Col. Clark and Mr. O'Brien and Mr. Robertson, as being the three persons who were here on the spot, and who had had the oversight of the destruction, as I am informed; I mean to say of the ordinary ballots.

Q. Did you take statements from them? A. I did.

Q. Are these the statements that you obtained from them at that time? Exhibit 6. A. They are.

Q. Is that your handwriting? A. Yes.

Q. I see these are dated 23rd day of May. A. It was a few days before that, very shortly before, I heard of the loss.

Q. Of course you had known Col. Clark for some time? A. Certainly.

Q. Had you known Mr. Robertson and Mr. O'Brien? A. I only knew Robertson from seeing him about the building; of course I have known Mr. O'Brien since he was house-keeper.

Q. What conclusion did you arrive at as the result of your investigation? A. The conclusion I came to was that the ballots had been destroyed accidentally on the first of the two days when the general ballots were being burned. I might say if you wish what seemed to me the most probable way of accounting for it; the vault is a narrow vault running a long way back; there were of course a large number of ballots blocking up—

His Honor Judge MORGAN: I suppose we are to some extent influenced by the ordinary rules of evidence, Mr. Watson, and Mr. Cartwright only reached his conclusion from the statements of parties we have had under examination, so what he gathered would be his private judgment.

Mr. WATSON:—But it having been delegated to him to make the enquiry, I want to know the result.

To His Honor Judge MORGAN:

Q. You satisfied your mind from the evidence presented that it was purely accidental? A. Yes.

Q. And that you reported? A. Yes.

To Mr. WATSON:

Q. To whom? A. To the Attorney-General, Mr. Hardy.

Q. In writing? A. No, only verbally.

Q. Did you obtain any other information that would bear upon it except as indicated in the statement you refer to? A. No, that contains all that I learned that bore on the question.

Q. In connection with your enquiry, did any suspicion arise of improper acts by any one? If so, tell us what it was. A. There was nothing of the kind whatever.

Q. If any suspicion or doubt was brought before you, I would like you to tell the Commissioners. A. No, I did not have anything that raised any doubt in my mind as to the loss being accidental.

Q. Do you know anything else in respect to it? A. No, I know nothing whatever.

JOHN R. BENNETT, sworn. Examined by Mr. WATSON:

Q. Are you in the employment of the Crown? A. I am, sir.

Q. How long have you been employed here? A. I started to work in this building the day the House opened.

Q. First? A. Yes sir, in April '93, I think.

Q. Have you been working here continuously? A. Yes sir, 365 days a year.

Q. Not 365 days? A. It comes to that relieving the other men on holidays.

Q. What are your duties? A. I am engaged as fireman.

Q. Any other duty than that? A. No, that is what I am paid for.

Q. That is in the furnaces on the lower floor. A. Yes sir, in the basement.

Q. On any occasion prior to this year did you have anything to do with the destruction of the ballots, that is before this last year? A. I couldn't say—I don't remember whether I helped once or not.

Q. You couldn't say whether before last year you had anything to do it or not? I don't think I did the time before that.

Q. Last year did you have anything to do with it? A. Yes, sir, I was working day work last April.

Q. Who asked you to help? A. Some one said they were going to burn the ballots—shortly after one o'clock they brought them down—we weren't ready in the morning.

Q. Where were you? A. In the fire hole.

Q. Who was with you? A. Burns, the assistant engineer, Griffiths and Mr. O'Brien and a man named Dan Dalton.

Q. What did you do there? A. I did the best I could.

Q. What did you do? A. I helped break open some boxes.

Q. Were you on the furnace floor or above? A. Part of the time on both.

Q. What were you doing above the furnace floor? A. Helping throw the boxes down on to the floor.

Q. Who did you help? A. Whoever brought them—sometimes I threw them down myself—it is seven or eight feet.

Q. Who told you to throw them down? A. They were brought there to be destroyed.

Q. Did you look at them before you threw them down? A. Some I looked at to tell Col. Clark, some he got himself and some Mr. O'Brien called out.

Q. Can you recollect any of the names you called out? A. Not particularly, no.

Q. Did you recognize a box or parcel called West Elgin bye-election? A. Not particularly.

Q. Do you recollect it at all? A. I do not.

Q. Were these boxes capable of identification or not? A. Only two I remember as being capable of identification and I don't remember what they were; they had hinges and locks on.

Q. Why could not the others be identified? A. They were just ordinary boxes.

Q. Any marks on them? A. Most of them had cards on with the names of the constituencies.

Q. What happened to the boxes when they were thrown over? A. We done our best to smash them; if we didn't, we broke them with an axe; then they were thrown to one side, mostly in fragments.

Q. Was there any box not thrown over? A. Yes, some were slide down the steps and broke with an axe.

Q. Was there any box that didn't go over, that was taken anywhere else? A. Not that I know of.

Q. Did you see any such thing? A. No, I did not.

Q. What was Col. Clark doing? A. Checking them off.

Q. Do you know if he checked them all off? A. To the best of my knowledge he did, sometimes I would look and give him the name; sometimes Mr. O'Brien did—several came along that he had to open before he could get the name.

Q. Was the work slow or fast? A. The work was fast, sometimes five or six parcels there at a time.

Q. Was more than one parcel thrown over at a time? A. They were thrown over as fast as they could throw them.

Q. Were you checked in throwing them over? A. Not that I remember.

Q. Those that were down on the furnace floor, what was down with them? A. The empty boxes were thrown to one side.

Q. But the contents? A. They were thrown in the furnace.

Q. Anything left? A. Not a scrap that I remember—they were well burned.

Q. Can you give any information as to these West Elgin bye-election ballots? A. I could not—I don't remember seeing them or any other parcel in particular.

Q. Do you know of any other information you can give relating to the matter? A. I do not.

To His Honor Judge MORGAN:

Q. Could you burn them as fast as they were thrown down? A. Almost; I think we had three furnaces going.

Q. They were tied together in bundles? A. Mostly.

Q. Did you open the bundles? A. Yes, we undid the string; sometimes we had to stop and raise the papers in the fire so they would burn.

Q. But as fast as they came down you managed to burn them? A. Yes, pretty well.

Q. There was no object in piling a lot of papers up you couldn't burn? A. They were never piled up.

Q. So as fast as they were thrown down and broken open the furnaces were able to get away with them? A. Yes; at times we had to wait for them.

JAMES A. ROBERTON, recalled. Examined by Mr. WATSON.

Q. You are already sworn? A. Yes.

Q. I observe a question has arisen as to how and when you were appointed, and how you were acting. I may have had a misunderstanding. When were you appointed to serve here in the Buildings? A. 1893, sir.

Q. Have you been here ever since then? A. Yes, sir, ever since then. I come in November, 1892, my appointment was in 1893.

Q. I observe that a question exists as to whether or not you were appointed directly or indirectly by Mr. Macnish? A. No, sir; I never knew him till he was a member here in 1896.

Q. Was your appointment owing to the recommendation of any one person specially? A. No, sir. Mr. O'Brien was down at the Union Station one day, and a man who knew me told me of it, and I got my appointment, and Mr. Fraser gave me my appointment in 1893. I came here under no politics at all.

CHARLES CLARK, re-called. Examined by Mr. WATSON:

Q. You have been sworn? A. Yes.

Q. Were you at St. Thomas when the election petition filed was called for trial? A. I was.

Q. At whose request were you there? A. I was subpoenaed by the petitioner.

Q. Did you attend in pursuance of that subpoena? A. Yes.

Q. Were you there more than one day? A. One day only—the trial concluded.

Q. I understand there was a settlement? A. I believe so, but I am not aware of it.

Q. Were you called as a witness? A. No, I wasn't called, though I attended as a witness.

Q. Did you attend in Court? A. I was in Court, and within call at the door part of the time.

Q. Did either party call you that day? A. Neither party called me that day. I went prepared to give evidence as to the existence or non-existence of these ballots. Had I been sworn I would have stated what I stated here before the Commission. I fully expected to have to do that.

Q. Were there any witnesses called? A. Yes, seven or eight, I believe.

To His Honor Judge MORGAN :

Q. Has there been any enquiry made of you for these ballots since that trial. A. Not since that trial beyond the subpoenas to attend in the case of Boles and Cahill—I should have attended that but I was in bed and unable to do so.

Q. Was there any notice served on you with reference to ballots or anything of that sort, any demand? A. Oh yes, they were sent to Osgoode Hall.

Q. But after that I mean. A. Yes, there was a notice only a few days ago to keep them as they might be wanted in court.

Q. A few days ago? A. A day or two before they would have been destroyed had they existed.

Q. Have you got that notice? A. It is an ordinary notice from the court.

To Mr. WATSON :

Q. You mean you received a notice from the Registrar of the Court? A. No, from the Judge, the ordinary notice.

Q. So that you would not destroy them at the end of the year? A. Yes.

Q. That is the only notice you received? A. I received this subpoena as well.

Q. I understand you received a subpoena in the matter of the Queen against Bole? A. Yes.

Q. Why did you not attend on that? A. At the instigation of the Deputy Attorney-General I did not attend because he thought it would be establishing an improper precedent, in as much as the ballots were asked for, and he did not think I had any right to produce them before a Justice of the Peace, that I must have an order from a Superior Court Judge.

To His Honor Judge MORGAN :

Q. Did you take any notice of it? A. I acknowledged the receipt of it.

(Adjourned to 1st March, 1900, at St. Thomas).

NOT RECORDED

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THE UNIVERSITY OF CHICAGO

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